

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
GIDEON X. MELVIN,
Defendant-Appellant.

No. 02-4631

Appeal from the United States District Court
for the Eastern District of North Carolina, at Wilmington.
James C. Fox, Senior District Judge.
(CR-00-110)

Submitted: February 5, 2003

Decided: February 24, 2003

Before WILKINS, Chief Judge, GREGORY, Circuit Judge, and
HAMILTON, Senior Circuit Judge.

Affirmed in part and dismissed in part by unpublished per curiam
opinion.

COUNSEL

Thomas P. McNamara, Federal Public Defender, Stephen C. Gordon,
Assistant Federal Public Defender, Raleigh, North Carolina, for
Appellant. Anne Margaret Hayes, Assistant United States Attorney,
Michael Gordon James, Assistant United States Attorney, Raleigh,
North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

In a previous appeal, this court affirmed Gideon X. Melvin's conviction for possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1) (2000), vacated his sentence, and remanded the case to the district court with instructions to reconsider Melvin's motion for a downward departure. On remand, the district court again denied Melvin's motion and imposed a 262-month sentence. Melvin appeals. His counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967), stating that there were no meritorious issues for appeal, but asserting that the district court erred in denying the motion for a downward departure because Melvin's criminal history category over-represented the seriousness of his criminal history. Melvin was informed of his right to file a pro se brief, but has not done so. Because our review of the record discloses no reversible error, we affirm in part and dismiss in part.

Where the sentencing court was aware of its authority to depart and simply declined to do so, we lack authority to review its decision. *See United States v. Edwards*, 188 F.3d 230, 238-39 (4th Cir. 1999); *United States v. Bayerle*, 898 F.2d 28, 31 (4th Cir. 1990). Here, the district court acknowledged that it had authority to depart, but concluded that a departure was not warranted in this case. We lack authority to review this decision and therefore dismiss this portion of the appeal.

As required by *Anders*, we have reviewed the entire record and have found no meritorious issues for appeal. We therefore affirm Melvin's sentence. This court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from represen-

tation. Counsel's motion must state that a copy thereof was served on the client. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART; DISMISSED IN PART