

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
MARTY SHANE ATWELL,
Defendant-Appellant.

No. 03-4073

Appeal from the United States District Court
for the Western District of North Carolina, at Statesville.
Richard L. Voorhees, District Judge.
(CR-01-21-V)

Submitted: October 27, 2003

Decided: December 4, 2003

Before LUTTIG, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Eric A. Bach, Charlotte, North Carolina, for Appellant. Douglas Scott Broyles, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Marty Shane Atwell pleaded guilty to one count of conspiracy to distribute Oxycodone, in violation of 21 U.S.C. §§ 841(a), 846 (2000). Atwell was sentenced to 108 months in prison. He now appeals. His attorney has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), raising three claims but stating that there are no meritorious issues for review. Atwell was advised of his right to file a pro se supplemental brief, but has not filed such a brief.

Atwell and his coconspirators obtained prescriptions for OxyContin through prescription fraud. Atwell also distributed the drug. Investigators estimated that Atwell was accountable for approximately 28,592 dosage units of OxyContin.

Our review of the record discloses full compliance with Fed. R. Crim. P. 11. Further, there is no merit to the claim that the district court should have required the United States to move for downward departure based upon substantial assistance. We note that the Government must move for such a departure, and there is no suggestion that the United States' decision not to make a motion was based upon improper motive or that the United States ceded to the district court its authority to make the departure decision. *See United States v. Butler*, 272 F.3d 683, 686 (4th Cir. 2001). Finally, we conclude that the district court correctly calculated Atwell's guideline range of 108-135 months and did not err in sentencing him to 108 months in prison.

We therefore affirm. As required by counsel, we have reviewed the entire record and have found no meritorious issues for appeal. We deny counsel's motion to withdraw from representation at this time. 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 Atwell requests that a petition be filed, but counsel believes that such a petition would be frivolous, counsel may move in this court to withdraw representation. Counsel's motion must state that counsel served a copy of the motion on Atwell. We dispense with oral argument because the facts and legal contentions are adequately pre-

mented in the materials before the court and argument would not aid the decisional process.

AFFIRMED