

UNPUBLISHED

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LORAN E. TWYMAN,
Defendant-Appellant.

No. 03-4337

Appeal from the United States District Court
for the Northern District of West Virginia, at Elkins.
Robert E. Maxwell, Senior District Judge.
(CR-01-19)

Submitted: October 29, 2003

Decided: December 5, 2003

Before TRAXLER and SHEDD, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Affirmed in part and dismissed in part by unpublished per curiam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

COUNSEL

Kevin T. Tipton, CLAGETT & GOREY, Fairmont, West Virginia,
for Appellant. Sherry L. Muncy, OFFICE OF THE UNITED
STATES ATTORNEY, Clarksburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Loran E. Twyman appeals from his 172-month sentence imposed following his guilty plea to distribution of 1.22 grams of cocaine and 1.22 grams of cocaine base (crack). Twyman's counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that there are no meritorious issues for appeal, but raising two issues. First, whether the district court erred by denying his objection to counting one of his prior sentences for purposes of calculating his criminal history. Second, whether the court erred by sentencing him to 172 months of imprisonment. Twyman 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.

We find that Twyman's guilty plea was knowingly and voluntarily entered after a thorough hearing pursuant to Fed. R. Crim. P. 11. Twyman was properly advised as to his rights, the offense charged, and the maximum sentence for the offense. The court also determined that there was an independent factual basis for the plea and that the plea was not coerced or influenced by any promises outside the plea agreement. *United States v. DeFusco*, 949 F.2d 114, 119-20 (4th Cir. 1991).

We do not find that the district court committed reversible error by giving Twyman's sentence for selling unlawful fireworks one criminal history point under *U.S. Sentencing Guidelines Manual* ("USSG") §§ 4A1.1(c), 4A1.2(c) (2002). This court reviews a district court's factual findings at sentencing for clear error, and its legal application of the United States Sentencing Guidelines de novo. *United States v. Daughtrey*, 874 F.2d 213, 217 (4th Cir. 1989).

Twyman challenges the severity of the sentence imposed. We find that the district court properly computed Twyman's offense level and

criminal history category and correctly determined that the applicable guideline range was 151 to 188 months. A court's decision to impose a sentence at a particular point within a properly calculated guideline range is not reviewable. *United States v. Jones*, 18 F.3d 1145, 1151 (4th Cir. 1994). Accordingly, we 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 Twyman's conviction and 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 representation. 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