

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4576

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BRANDON SCOTT MORTON,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Margaret B. Seymour, District Judge. (CR-02-871)

Submitted: February 12, 2004

Decided: February 20, 2004

Before LUTTIG, WILLIAMS, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James Barlow Loggins, Assistant Federal Public Defender, Greenville, South Carolina, for Appellant. Isaac Louis Johnson, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Brandon Morton appeals his conviction pursuant to a guilty plea and 151-month sentence for two counts of bank robbery, in violation of 18 U.S.C. § 2113(a) (2000). Counsel for Morton has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), in which he states there are no meritorious grounds for appeal, but presenting one issue for this court's review. Although notified of his right to file a supplemental brief, Morton has not done so. Finding no error, we affirm.

Counsel suggests that the district court erred in failing to depart downward from Morton's sentencing range for his substantial assistance to the Government. However, in the plea agreement, the Government retained discretion over whether to make a substantial assistance motion; it was not obligated to so move. See United States v. Snow, 234 F.3d 187, 190 (4th Cir. 2000). Moreover, the denial of a request for a downward departure is not reviewable on appeal unless the district court mistakenly believed it lacked the authority to depart. United States v. Bayerle, 898 F.2d 28, 30 (4th Cir. 1990). The record indicates the district court understood its authority to depart, but that it chose not to depart. Therefore, Morton's claim is unreviewable on appeal.

As required by Anders, we have reviewed the entire record and have found no meritorious issues for appeal. Accordingly, we affirm Morton's conviction and sentence. The 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