

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4741

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

THOMAS LEE DOWNS, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Margaret B. Seymour, District Judge. (CR-02-341)

Submitted: March 17, 2004

Decided: April 7, 2004

Before WILLIAMS, MICHAEL, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Benjamin T. Stepp, Assistant Federal Public Defender, Greenville, South Carolina, for Appellant. Regan Alexandra Pendleton, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Thomas Lee Downs, Jr., pled guilty pursuant to a written plea agreement to three counts of distribution and possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841 (2000).^{*} The district court sentenced him to 262 months' imprisonment followed by five years of supervised release. On appeal, Downs's attorney filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967), asserting that there are no meritorious issues presented in the appeal, but raising the claims that the district court failed to comply with Fed. R. Crim. P. 11 in accepting Downs's guilty plea, failed to lawfully sentence Downs, and improperly denied Downs's motion for a downward departure. Downs has also filed a pro se supplemental brief.

As to the claims raised by counsel, we find the district court fully complied with the requirements of Rule 11. We further find that the district court properly adopted the unopposed presentence report and correctly sentenced Downs within the proper sentencing guidelines range. Finally, we find that the district court was aware of its authority to depart from the sentencing guidelines range and elected not to do so in its discretion. We also find without merit the claims raised by Downs in his pro se supplemental brief.

^{*}Downs's plea agreement did not contain a waiver of appellate rights.

We have examined the entire record in this case in accordance with the requirements of Anders and find no meritorious issues for appeal. Accordingly, we affirm Downs'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