

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4003

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SEAN GREGORY MITCHELL,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern
District of Virginia, at Newport News. Rebecca Beach Smith,
District Judge. (CR-03-97)

Submitted: May 19, 2005

Decided: May 24, 2005

Before LUTTIG, MOTZ, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Bryan L. Saunders, Newport News, Virginia, for Appellant. Dennis
Joseph Guthinger, Assistant United States Attorney, Newport News,
Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Sean Gregory Mitchell appeals his convictions and 141-month sentence for two counts of distribution of cocaine base, in violation of 21 U.S.C. § 841 (2000), and two counts of use of a cellular phone in the distribution of cocaine, in violation of 21 U.S.C. § 843 (2000). Mitchell's attorney has filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967), asserting that Mitchell's sentence is excessive, but stating that he finds no meritorious grounds for appeal. Although Mitchell was informed of his right to file a pro se supplemental brief, he did not do so. Finding no reversible error, we affirm.

In the Anders brief, counsel raises the potential issue of whether the district court imposed an excessive sentence. However, Mitchell's offense level was not increased based on any fact he did not admit in his guilty plea. Accordingly, because the sentence is not plainly erroneous in light of United States v. Booker, 125 S. Ct. 738 (2005), and there is no indication that Mitchell's sentence is unreasonable, the sentencing challenge lacks merit. See United States v. White, __ F.3d __, 2005 WL 949326 (4th Cir. Apr. 26, 2005)

In accordance with Anders, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We, therefore, affirm Mitchell'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 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