

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4691

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MELVIN B. WELLS, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, District Judge. (CR-04-69)

Submitted: January 28, 2005

Decided: March 24, 2005

Before NIEMEYER, WILLIAMS, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Frank W. Dunham, Jr., Federal Public Defender, Riley H. Ross, III, Assistant Federal Public Defender, Norfolk, Virginia, for Appellant. Paul J. McNulty, United States Attorney, Michael J. Elston, Assistant United States Attorney, Kurt G. Larkin, Special Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Melvin B. Wells, Jr., consented to be tried before a magistrate judge on a criminal information charging him with: Count 1, disorderly conduct in a public place, in violation of 18 U.S.C. §§ 7 & 13 (2000), assimilating Va. Code Ann. § 18.2-415 (Lexis 2004); Count 2, obstructing justice in violation of 18 U.S.C. §§ 7 & 13, assimilating Va. Code Ann. § 18.2-460 (Lexis 2004); Count 3, resisting arrest, in violation of 18 U.S.C. §§ 7 & 13, assimilating Va. Code Ann. § 18.2-479 (Lexis 2004); and Count 4, failing to stop for a posted sign, in violation of 18 U.S.C. §§ 7 & 13, assimilating Va. Code Ann. § 46.2-821 (Lexis 2002). Following a bench trial, the magistrate judge* found Wells not guilty of Count 2 but found him guilty of the other charges. Wells was sentenced to one year of probation, fined \$275, and given a special assessment of \$55. The district court affirmed Wells' convictions on appeal.

On appeal to this court, counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), alleging that there are no meritorious claims on appeal but raising the following issues: (1) that the district court erred by denying a motion for a continuance; (2) there was insufficient evidence to support the conviction for resisting arrest; and (3) that Wells' resisting

*Wells consented to be tried without a jury before the magistrate judge.

arrest conviction should have been dismissed because he was found not guilty of obstruction of justice. For the reasons that follow, we affirm.

First, we do not find the district court abused its discretion by denying Wells' motion for a continuance on the day of trial. Morris v. Slappy, 461 U.S. 1, 11-12 (1983). In particular, Wells failed to show that he was prejudiced by the denial of his motion. Hill v. Ozmint, 339 F.3d 187, 196-97 (4th Cir. 2003). Second, viewing the evidence as required, we find that any rational trier of fact could have found Wells guilty of Count 3, resisting arrest under the applicable Virginia statute for escape. Glasser v. United States, 315 U.S. 60, 80 (1942). Finally, we find no merit to Wells' claim that because he was found not guilty of Count 2 his charge for Count 3 should have been dismissed.

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. 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