

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-4783

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANTONIO REYNOSO,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. Samuel G. Wilson, District Judge. (5:03-cr-70006-SGW)

Submitted: April 26, 2007

Decided: April 30, 2007

Before WILLIAMS, MICHAEL, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Jay K. Wilk, Woodstock, Virginia, for Appellant. William Frederick Gould, OFFICE OF THE UNITED STATES ATTORNEY, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Antonio Reynoso pled guilty to conspiracy to possess with intent to distribute fifty grams or more of cocaine base (crack) and five kilograms of cocaine,¹ 21 U.S.C. § 846 (2000), and was sentenced to a term of 262 months imprisonment. Reynoso's attorney has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), raising two issues but stating that, in his view, there are no meritorious issues for appeal. Reynoso has filed a pro se supplemental brief raising additional issues. We affirm.

At sentencing, the district court adopted the presentence report without objection. Both the government and Reynoso's attorney asked the court to impose sentence at the low end of the advisory guideline range of 262-327 months, and the court complied. In the Anders brief, counsel suggests that the sentence was unreasonable and that the court should have departed below the guideline range pursuant to U.S. Sentencing Guidelines Manual § 5H1.6, p.s. (2005), due to Reynoso's extensive family ties and responsibilities. We discern no error. Reynoso did not request a departure, and a sentence within a properly calculated advisory guideline range is presumptively reasonable. United States v. Johnson, 445 F.3d 339, 341 (4th Cir. 2006).

¹The judgment order inaccurately states that Reynoso pled guilty to conspiracy to distribute and possess with intent to distribute 500 grams or more of cocaine base.

In his pro se brief, Reynoso claims that the Fifth and Sixth Amendments were violated when the district court found that he was responsible for a quantity of crack in excess of the amount charged in the indictment. Because Reynoso was sentenced under an advisory guideline scheme, no constitutional error occurred. United States v. Hughes, 401 F.3d 540, 546 (4th Cir. 2005). He also argues that the court plainly erred in awarding him a four-level leadership role adjustment, USSG § 3B1.1(a); however, the presentence report contained uncontested information that supported the adjustment. Finally, Reynoso claims that his sentence was unreasonable because a co-defendant's sentence of 360 months was later reduced on the government's motion. "[A] defendant can only rebut the presumption of reasonableness by demonstrating that the sentence is unreasonable when measured against the § 3553(a) [2] factors." United States v. Montes-Pineda, 445 F.3d 375, 379 (4th Cir. 2006) (internal quotation marks and citation omitted), petition for cert. filed, __ U.S.L.W. __ (U.S. July 21, 2006) (No. 06-5439). Reynoso has not met that burden.

Pursuant to Anders, we have examined the entire record and find no meritorious issues for appeal. Accordingly, we affirm the 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

²18 U.S.C.A. § 3553(a) (West 2000 & Supp. 2006).

requests that such 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