

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 07-4428**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JOE LEE NEWCOMB,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, Senior District Judge. (1:06-cr-00421-WLO)

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Submitted: September 24, 2007

Decided: October 9, 2007

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Before TRAXLER, KING, and DUNCAN, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Louis C. Allen III, Federal Public Defender, William S. Trivette, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Michael Augustus DeFranco, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Joe Lee Newcomb pled guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e) (2000). The district court sentenced Newcomb to 180 months' incarceration, five years supervised release, and assessed a \$100 fine. On appeal, Newcomb's counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), stating there were no meritorious issues for appeal, but raising for review the issue of whether the district court erred by not sentencing Newcomb to less than 180 months' incarceration. Newcomb was advised of the right to file a pro se supplemental brief, but has not done so.

After United States v. Booker, 543 U.S. 220 (2005), a district court is no longer bound by the range prescribed by the sentencing guidelines. However, Booker "did nothing to alter the rule that judges cannot depart below a statutorily provided minimum sentence" except upon the Government's motion on the basis of substantial assistance. United States v. Robinson, 404 F.3d 850, 862 (4th Cir.), cert. denied, 546 U.S. 916 (2005). For a defendant, like Newcomb, who is found guilty of being a convicted felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1), 924(e), the minimum term of incarceration required to be imposed is 180 months. The district court sentenced Newcomb to the mandatory minimum penalty. The district court did not have the

legal authority to impose any less time, and thus did not err by declining to do so.

In accordance with Anders, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We therefore affirm Newcomb's conviction and sentence. This court requires that counsel inform Newcomb, in writing, of the right to petition the Supreme Court of the United States for further review. If Newcomb 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 Newcomb.

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