

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4395

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JERRY WAYNE KERNS,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., Chief District Judge. (3:07-cr-00018-RJC-1)

Submitted: December 16, 2008

Decided: December 22, 2008

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

David L. Hitchens, LAW OFFICE OF DAVID L. HITCHENS, PLLC, Charlotte, North Carolina, for Appellant. Amy Elizabeth Ray, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jerry Wayne Kerns appeals the seventy-month sentence imposed after he pled guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (2006). Kerns' counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), stating that there are no meritorious issues for appeal but questioning whether the district court erred by applying a four-level enhancement under U.S. Sentencing Guidelines Manual ("USSG") § 2K2.1(b)(6) (2005), for possession of a weapon in connection with another felony offense. We affirm.

Counsel questions whether the district court erred by enhancing Kerns' offense level under USSG § 2K2.1(b)(6). In order for the enhancement to apply, "the district court must find both that a firearm was used (or that the defendant possessed . . . the firearm expecting that it would be used) and that such use was in connection with another felony offense." United States v. Garnett, 243 F.3d 824, 828 (4th Cir. 2001) (internal quotation marks and citation omitted). Our review of the record convinces us that the district court did not clearly err in applying the enhancement in USSG § 2K2.1(b)(6). See id. (stating standard of review).

In accordance with Anders, we have reviewed the record for any meritorious issues for appeal and have found none.

Thus, we affirm the district court's judgment. 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