

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4682

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT MARTIN KUTZER,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Lacy H. Thornburg, District Judge. (1:07-cr-00089-LHT-1)

Submitted: July 2, 2009

Decided: July 15, 2009

Before TRAXLER, Chief Judge, and WILKINSON and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Randolph Marshall Lee, Charlotte, North Carolina, for Appellant.
Donald David Gast, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Martin Kutzer was convicted by a jury of one count of coercion and enticement of a minor in violation of 18 U.S.C. § 2422(b) (2006), and was sentenced to one hundred twenty months in prison. On appeal, counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), asserting there are no meritorious grounds for appeal, but questioning whether Kutzer's conviction is supported by sufficient evidence. In a pro se supplemental brief, Kutzer joined in the issues raised by counsel and also questioned whether the statements he made while in custody should have been suppressed; whether his trial counsel was ineffective; and whether the district court erred in giving the jury instructions.

Kutzer first contends the evidence was insufficient to support his convictions. A jury's verdict must be upheld on appeal if there is substantial evidence in the record to support it. Glasser v. United States, 315 U.S. 60, 80 (1942). In determining whether the evidence in the record is substantial, we view the evidence in the light most favorable to the Government and inquire whether there is evidence that a reasonable finder of fact could accept as adequate and sufficient to establish the defendant's guilt beyond a reasonable doubt. United States v. Burgos, 94 F.3d 849, 862 (4th Cir. 1996) (en banc). We do not review the credibility of

the witnesses and assume the jury resolved all contradictions in the testimony in favor of the Government. United States v. Kelly, 510 F.3d 433, 440 (4th Cir. 2007), cert. denied, 128 S. Ct. 1917 (2008). In light of these principles, we conclude substantial evidence supports Kutzer's convictions.

In his supplemental brief, Kutzer claims that counsel provided ineffective assistance at sentencing. Claims of ineffective assistance of counsel are generally not cognizable on direct appeal. See United States v. King, 119 F.3d 290, 295 (4th Cir. 1997). Rather, to allow for adequate development of the record, a defendant must bring such claims in a 28 U.S.C.A. § 2255 (West Supp. 2009) motion. See id.; United States v. Hoyle, 33 F.3d 415, 418 (4th Cir. 1994). An exception exists where the record conclusively establishes ineffective assistance. United States v. Richardson, 195 F.3d 192, 198 (4th Cir. 1999); King, 119 F.3d at 295. Because the record does not conclusively show that Kutzer's counsel was ineffective, we decline to consider Kutzer's claim on direct appeal. We have reviewed Kutzer's remaining pro se claims and find they lack merit.

In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. We therefore affirm Kutzer's conviction and sentence. This court requires that counsel inform Kutzer, in writing, of the

right to petition the Supreme Court of the United States for further review. If Kutzer 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 Kutzer.

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