

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 08-4864**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERROL ZELADA LOPEZ,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Durham. N. Carlton Tilley, Jr., Senior District Judge. (1:07-cr-00200-NCT-11)

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Submitted: May 8, 2009

Decided: June 3, 2009

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Before TRAXLER, KING, and AGEE, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Michael Driver, Durham, North Carolina, for Appellant. Sandra Jane Hairston, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Errol Zelada Lopez pled guilty pursuant to a plea agreement to one count of conspiracy to distribute 5 kilograms or more of cocaine base, in violation of 21 U.S.C. §§ 841(b)(1)(A), 846 (2006). The district court sentenced Lopez to the minimum imprisonment term required by statute, 120 months. He now appeals. 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 abused its discretion in sentencing Lopez. Lopez has also filed a pro se supplemental brief. Finding no error, we affirm.

We review a sentence for abuse of discretion. Gall v. United States, 128 S. Ct. 586, 597 (2007). The first step in this review requires us to ensure that the district court committed no significant procedural error, such as improperly calculating the Guidelines range. United States v. Osborne, 514 F.3d 377, 387 (4th Cir.), cert. denied, 128 S. Ct. 2525 (2008). We then consider the substantive reasonableness of the sentence imposed, taking into account the totality of the circumstances. Gall, 128 S. Ct. at 597. When reviewing a sentence on appeal, we presume that a sentence within a properly calculated Guidelines range is reasonable. United States v. Allen, 491 F.3d 178, 193 (4th Cir. 2007). Further, a

statutorily required sentence is per se reasonable. United States v. Farrior, 535 F.3d 210, 224 (4th Cir. 2008).

We have reviewed the record and conclude that the district court did not err or abuse its discretion in sentencing Lopez, and his sentence is reasonable. Lopez was subject to a mandatory minimum prison term of ten years under 21 U.S.C. § 841(b)(1)(A). Although Lopez's initial Guidelines range had he not been subject to a statutory mandatory minimum sentence would have been 108 to 135 months, the district court properly took the mandatory minimum sentence into account and correctly determined that Lopez's Guidelines range was 120 to 135 months. The court gave the parties an opportunity to argue for an appropriate sentence in that range and heard allocution from Lopez. The 120-month prison sentence Lopez received was within the properly-calculated Guidelines range and the minimum required by statute. Accordingly, we conclude that the district court did not abuse its discretion in sentencing Lopez. Further, after review of Lopez's pro se supplemental brief, we conclude it does not raise any meritorious issues for appeal.

As required by Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. We therefore affirm the district court's judgment. This court requires that counsel inform Lopez, in writing, of the right to petition the Supreme Court of the United States for further

review. If Lopez 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 Lopez. 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