

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4200

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTOINE DEVARUS UPCHURCH,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. James A. Beaty, Jr., Chief District Judge. (1:07-cr-00399-JAB-1)

Submitted: October 15, 2009

Decided: October 19, 2009

Before SHEDD, DUNCAN, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Louis C. Allen III, Federal Public Defender, Gregory Davis, Senior Litigator, Winston-Salem, North Carolina, for Appellant. Terry Michael Meinecke, Angela Hewlett Miller, Assistant United States Attorneys, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Antoine Devarus Upchurch appeals from his conviction and 120-month sentence imposed pursuant to his guilty plea to distribution of crack cocaine. Counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), concluding that there are no meritorious issues for appeal but questioning whether the statutory sentencing scheme for crack cocaine offenses creates an unconstitutional disparity between sentences for crack cocaine and powder cocaine offenses or subjects African Americans to harsher punishment in violation of the Equal Protection Clause. Although informed of his right to do so, Upchurch has not filed a pro se supplemental brief.

As Upchurch recognizes, we have repeatedly rejected claims that the statutory sentencing disparity between powder cocaine and crack cocaine offenses violates the Equal Protection Clause. See United States v. Perkins, 108 F.3d 512, 518 (4th Cir. 1997); United States v. Fisher, 58 F.3d 96, 99-100 (4th Cir. 1995). In accordance with Anders, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We therefore affirm Upchurch's 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 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