

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4638

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SCOTT DUANE HENDRICKS,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., Senior District Judge. (6:09-cr-01069-HMH-1)

Submitted: January 18, 2011

Decided: January 26, 2011

Before NIEMEYER, DUNCAN, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Benjamin T. Stepp, Assistant Federal Public Defender, Greenville, South Carolina, for Appellant. Andrew Burke Moorman, OFFICE OF THE UNITED STATES ATTORNEY, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Scott Duane Hendricks pled guilty to possession of ammunition by a convicted felon, 18 U.S.C. § 922(g) (2006), and was sentenced to thirty-seven months imprisonment, to be served consecutively to his undischarged state sentence. Hendricks noted a timely appeal. Counsel has filed a brief in accordance with Anders v. California, 386 U.S. 738 (1967), in which he states that there are no meritorious issues for appeal, but questions whether Hendricks' sentence was reasonable. Specifically, counsel asserts that the district court should have ordered that Hendricks' sentence be served concurrent, rather than consecutive to, his state sentence. For the reasons that follow, we affirm.

This court reviews a district court's sentence for reasonableness under an abuse-of-discretion standard. Gall v. United States, 552 U.S. 38, 51 (2007). This review requires appellate consideration of both the procedural and substantive reasonableness of a sentence. Id. This court must assess whether the district court properly calculated the advisory Guidelines range, considered the 18 U.S.C. § 3553(a) (2006) factors, analyzed any arguments presented by the parties, and sufficiently explained the selected sentence. United States v. Lynn, 592 F.3d 572, 576 (4th Cir. 2010) ("[A]n individualized explanation must accompany every sentence.") (emphasis

omitted); United States v. Carter, 564 F.3d 325, 330 (4th Cir. 2009) (same). In addition, this court presumes on appeal that a sentence within a properly determined advisory Guidelines range is substantively reasonable. United States v. Allen, 491 F.3d 178, 193 (4th Cir. 2007).

We conclude that Hendricks' sentence is both procedurally and substantively reasonable. The district court properly calculated Hendricks' Guidelines range, treated the Guidelines as advisory, and considered the applicable 18 U.S.C. § 3553(a) factors. See United States v. Pauley, 511 F.3d 468, 473 (4th Cir. 2007). Moreover, the district court based its sentence on its individualized assessment of the facts of the case. See Carter, 564 F.3d at 328. The district court's decision to impose Hendricks' sentence to run consecutively to his undischarged state sentence was not an abuse of the court's discretion. Hendricks has not rebutted the presumption that his within-Guidelines sentence is reasonable. We therefore find the sentence reasonable.

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

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