

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-4657

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTONIO LATRE HALL, a/k/a Tony Bone,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, District Judge. (3:09-cr-00054-FDW-1)

Submitted: September 13, 2011

Decided: October 17, 2011

Before SHEDD, DUNCAN, and DAVIS, Circuit Judges.

Affirmed in part; vacated and remanded in part by unpublished per curiam opinion.

Daniel K. Dorsey, Washington, D.C., 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Unpublished opinions are not binding precedent in this circuit.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:

Antonio Latre Hall pled guilty to possession with intent to distribute at least five grams of cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B) (2006). Prior to the plea hearing, the Government filed an information pursuant to 21 U.S.C. § 851 (2006), notifying Hall of its intent to seek enhanced penalties based on two prior felony drug convictions. The district court rejected Hall's request for a variant sentence and imposed a within-guidelines sentence of 268 months of imprisonment. Hall appealed.

Counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), noting no meritorious issues for appeal, but questioning whether any errors occurred during Hall's plea hearing and sentencing. Hall has filed a pro se supplemental brief raising several issues. We have reviewed the record and conclude that the district court substantially complied with the requirements of Fed. R. Crim. P. 11 and ensured that Hall's plea was knowing and voluntary and supported by a sufficient factual basis. Consequently, we affirm Hall's conviction.

We vacate Hall's sentence, however, and remand for further proceedings in light of our recent en banc decision in United States v. Simmons, ___ F.3d ___, 2011 WL 3607266 (4th Cir.

Aug. 17, 2011).^{*} The present record is not sufficient to allow a determination of whether, after Simmons, Hall's prior conviction qualified as a felony drug offender for purposes of an enhanced statutory penalty under 21 U.S.C. §§ 841(b), 851. We leave this determination to the district court on remand.

In accordance with Anders, we have reviewed the entire record in this case and have found no other meritorious issues for appeal. We therefore affirm Hall's conviction and vacate his sentence and remand to the district court for further proceedings consistent with this opinion. This court requires that counsel inform Hall, in writing, of the right to petition the Supreme Court of the United States for further review. If Hall 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 Hall. 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 IN PART; VACATED AND REMANDED IN PART

^{*} Although we vacate Hall's sentence on account of Simmons, we have considered and find without merit the remaining issues raised by Hall in his pro se supplemental brief.