

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-5252

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERTO CRUZ-CARRASCO,

Defendant - Appellant.

No. 11-4006

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MELVIN EFRAIN CRUZ,

Defendant - Appellant.

Appeals from the United States District Court for the District of South Carolina, at Greenville. Henry F. Floyd, District Judge. (6:10-cr-00054-HFF-2; 6:10-cr-00054-HFF-9)

Submitted: August 3, 2011

Decided: August 18, 2011

Before NIEMEYER, KING, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Benjamin T. Stepp, Assistant Federal Public Defender, Greenville, South Carolina; William T. Clarke, SARRATT & CLARKE, Greenville, South Carolina, for Appellants. 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Unpublished opinions are not binding precedent in this circuit.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:

In these consolidated appeals, Roberto Cruz-Carrasco appeals the eighty-four-month within-Guidelines sentence imposed after he pled guilty to possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1) (2006), and possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A) (2006). Melvin Efrain Cruz appeals the eighty-four-month below-Guidelines sentence imposed after he pled guilty to two counts of possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1). Counsel for Appellants filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), certifying that there are no nonfrivolous issues for appeal but questioning whether the district court imposed reasonable sentences. Cruz-Carrasco has filed a pro se supplemental brief.* Cruz was informed of his right to file a pro se brief but has not filed one. Finding no error, we affirm.

We review a sentence for reasonableness, applying an abuse of discretion standard. Gall v. United States, 552 U.S.

* Cruz-Carrasco asserts his actual innocence of possession of a firearm in furtherance of a drug trafficking offense. We conclude that his claim lacks merit. With regard to Cruz-Carrasco's claim that counsel rendered ineffective assistance, we decline to review that claim on direct appeal. See United States v. Baldovinos, 434 F.3d 233, 239 (4th Cir. 2006) (providing standard).

38, 51 (2007); United States v. Lynn, 592 F.3d 572, 575 (4th Cir. 2010). We begin by reviewing the sentence for "significant procedural error," including "failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the [18 U.S.C.] § 3553(a) [(2006)] factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence including an explanation for any deviation from the Guidelines." Gall, 552 U.S. at 51. We next assess the substantive reasonableness of the sentence, "taking into account the 'totality of the circumstances, including the extent of any variance from the Guidelines range.'" United States v. Pauley, 511 F.3d 468, 473 (4th Cir. 2007) (quoting Gall, 552 U.S. at 51). Because Appellants received the sentences they requested, our review is for plain error. See United States v. Lynn, 592 F.3d 572, 577-78, 580 (4th Cir. 2010); see also United States v. Hernandez, 603 F.3d 267, 270 (4th Cir. 2010) (reviewing claim of procedural unreasonableness for plain error because defendant did not argue for sentence different from sentence he received).

With these standards in mind, we have reviewed Cruz-Carrasco's and Cruz's sentencing proceedings. The district court properly calculated Appellants' Guidelines ranges and offered sufficiently reasoned explanations for the sentences

imposed. We therefore conclude that Appellants' sentences are procedurally and substantively sound.

In accordance with Anders, we have reviewed the record in these cases and have found no meritorious issues for appeal. We therefore affirm the district court's judgments. This court requires that counsel inform their clients, in writing, of the right to petition the Supreme Court of the United States for further review. If either 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 his 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