

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-4033

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

IRVIN JOSUE NAVARRO RAMIREZ,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., Chief District Judge. (3:09-cr-00153-RJC-DCK-1)

Submitted: January 5, 2012

Decided: February 3, 2012

Before SHEDD, WYNN, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Dianne K. McVay, JONES MCVAY FIRM, PLLC, Charlotte, North Carolina, 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Unpublished opinions are not binding precedent in this circuit.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:

Irvin Josue Navarro Ramirez was sentenced to eighty-seven months' incarceration after pleading guilty to conspiracy to distribute and possess with intent to distribute one kilogram or more of heroin, in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A) (2006). Ramirez's counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), in which she states that she could identify no meritorious issues for appeal, but requests the court to review whether the district court properly applied an enhancement for Ramirez's role as a manager or supervisor. Ramirez was informed of his right to file a pro se supplemental brief, but has not done so. The Government declined to file a brief. Having reviewed the record, we affirm the judgment of the district court.

A three-level enhancement for an aggravating role in the offense is authorized "[i]f the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive." U.S. Sentencing Guidelines Manual ("USSG") § 3B1.1(b) (2009). This court has explained that "the key inquiry is whether the defendant's role was that of an organizer or leader of people, as opposed to that of a manager over the property, assets, or activities of a criminal organization." United States v. Llamas, 599 F.3d 381, 390 (4th Cir. 2010)

(internal quotation marks omitted). "Thus, the aggravating role adjustment is appropriate where the evidence demonstrates that the defendant controlled the activities of other participants or exercised management responsibility." Id. (internal quotation marks omitted). The district court's determination that a defendant played an aggravating role in an offense is a factual determination reviewed for clear error. United States v. Kellam, 568 F.3d 125, 147-48 (4th Cir. 2009).

The district court found that Ramirez had stepped into the shoes of the conspiracy's former leader, based on telephone conversations, surveillance that tended to show that Ramirez was being groomed for the position, and the fact that calls from a co-conspirator to Ramirez resulted in deliveries of heroin, either personally or, more often, through runners. A law enforcement agent testified that the former leader had at least four underlings, and that Ramirez used four different runners, including one who drove him to make deliveries. In light of this evidence, we conclude that the district court's application of an aggravating role enhancement was not clearly erroneous.

In accordance with Anders, we have reviewed the entire 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 Ramirez, in writing, of the right to petition the Supreme Court of the United States for

further review. If Ramirez 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 Ramirez. 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