

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-4992

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEONTAYE DERRICK HARVEY,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, District Judge. (1:11-cr-00578-CCB-1)

Submitted: October 22, 2013

Decided: October 29, 2013

Before WILKINSON, AGEE, and KEENAN, Circuit Judges.

Dismissed in part, affirmed in part by unpublished per curiam opinion.

Thomas J. Saunders, LAW OFFICE OF THOMAS J. SAUNDERS, Baltimore, Maryland, for Appellant. Benjamin M. Block, OFFICE OF THE UNITED STATES ATTORNEY, John Walter Sippel, Jr., Assistant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Deontaye Harvey pled guilty in accordance with a written plea agreement to Hobbs Act robbery, 18 U.S.C. § 1951(a) (2006), and brandishing a firearm in furtherance of a crime of violence, 18 U.S.C. § 924(c) (2006). Harvey was sentenced to seventy-eight months in prison for the conspiracy and eighty-four months, consecutive, for the firearm offense. He now appeals. His attorney has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), raising three issues but stating that there are no meritorious issues for appeal. Harvey was advised of his right to file a pro se supplemental brief but did not file such a brief.

The United States moves to dismiss the appeal in part based on Harvey's waiver in his plea agreement of his right to appeal his convictions and any sentence determined using a base offense level of 27 or lower, plus the statutorily required seven years consecutive for the firearm offense. Upon review of the record, including the plea agreement, the transcript of the Fed. R. Crim. P. 11 proceeding, the presentence investigation report, and the sentencing transcript, we conclude that Harvey's waiver was knowing and voluntary. We further find that the issues Harvey seeks to raise on appeal—whether the sentence is reasonable and whether he was denied his right to allocution—

fall within the scope of the waiver. Accordingly, with respect to these waivable issues, we grant the motion to dismiss.

Pursuant to Anders, we have reviewed the entire record for meritorious nonwaivable issues, see United States v. Johnson, 410 F.3d 137, 151 (4th Cir. 2005), and have found none. We therefore affirm in part and dismiss in part. This court requires that counsel inform Harvey, in writing, of his right to petition the Supreme Court of the United State for further review. If Harvey requests that such a petition be filed, but counsel believes that the 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 of the motion was served on Harvey. 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.

DISMISSED IN PART;
AFFIRMED IN PART