

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i>
v.
GREGORY J. SMITH, <i>Defendant-Appellant.</i>

No. 00-4450

Appeal from the United States District Court
for the District of South Carolina, at Columbia.
Dennis W. Shedd, District Judge.
(CR-96-654-DWS)

Submitted: November 14, 2000

Decided: December 7, 2000

Before WIDENER, MOTZ, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Langdon D. Long, Assistant Federal Public Defender, Columbia, South Carolina, for Appellant. Marshall Prince, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Gregory J. Smith appeals his re-sentencing following his guilty plea to a violation of 18 U.S.C.A. § 922(g) (West Supp. 2000). Smith noted a timely appeal and his counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967), in which he represents that there are no arguable issues of merit in this appeal. In his brief, counsel addressed whether the district court's upward departure from the Sentencing Guidelines' range of 188-235 months and imposition of a sentence of 288 months was proper under *United States v. Cash*, 983 F.2d 558, 561 & nn.6-7 (4th Cir. 1992), and *United States v. Rusher*, 966 F.2d 868, 884 (4th Cir. 1992). The 288 month sentence imposed upon Smith falls within the Sentencing Guideline departure range mandated by this Court in *United States v. Smith*, 173 F.3d 853 (4th Cir. 1999) (unpublished), *amended by* 187 F.3d 633 (4th Cir. 1999) (unpublished). Because we find counsel's assignment of error to be without merit and discern no other reversible error based on our review of the record and Smith's supplemental brief, we affirm Smith's sentence.

As required by *Anders*, we have independently reviewed the entire record and all pertinent documents. We have considered all possible issues presented by this record and conclude that there are no non-frivolous grounds for this appeal. Pursuant to the plan adopted by the Fourth Circuit Judicial Council in implementation of the Criminal Justice Act of 1964, 18 U.S.C. § 3006A (1994), this court requires that counsel inform his client, in writing, of his right to petition the Supreme Court for further review. If requested by the client to do so, counsel should prepare a timely petition for writ of certiorari, unless counsel believes that such a petition would be frivolous. In that case, counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client.

Smith's sentence is affirmed. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument will not aid the decisional process.

AFFIRMED