

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

GERALD ALONZO MOORE,
Defendant-Appellant.

No. 01-4444

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

GERALD ALONZO MOORE,
Defendant-Appellant.

No. 01-4445

Appeals from the United States District Court
for the Middle District of North Carolina, at Durham.
Frank W. Bullock, Jr., District Judge.
(CR-00-394-1, CR-00-395-1)

Submitted: November 27, 2001

Decided: January 15, 2002

Before WILKINS, MICHAEL, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

Louis C. Allen, III, Federal Public Defender, William C. Ingram, Jr.,
First Assistant Federal Public Defender, Greensboro, North Carolina,

for Appellant. Benjamin H. White, Jr., United States Attorney, Robert M. Hamilton, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Gerald Alonzo Moore pled guilty to two separate one-count indictments charging him with two different bank robberies. Moore's attorney has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), in which he represents that there are no arguable issues of merit in this appeal. Nevertheless, in his brief, counsel addresses the possibility that the district court should have granted Moore's motion for a downward departure. Although advised of his right to do so, Moore did not file a pro se supplemental brief. Because we find that the district court's decision is not reviewable, we dismiss the appeal.

A district court's refusal to grant a downward departure is not reviewable on appeal unless the court erroneously believed that it lacked the authority to depart. *United States v. Bayerle*, 898 F.2d 28, 30-31 (4th Cir. 1990). The record here clearly shows the district court recognized that it had the authority to grant Moore's motion, but declined to do so under the circumstances.

We have examined the entire record in this case in accordance with the requirements of *Anders* and find no meritorious issues for appeal. The court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the 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 the client.

We therefore dismiss Moore's appeal. We also deny counsel's current motion to withdraw. 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