

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-4700

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DERRICK EARL MILLER,

Defendant - Appellant,

versus

SHIRLEY J. ROBINSON; JANICE DENISE ROSEMOND;
DAVID ATKINS; SHIRLEY ATKINS; JAMES BRAZEL,

Parties in Interest.

Appeal from the United States District Court for the District of
South Carolina, at Greenville. Henry F. Floyd, District Judge.
(CR-04-22)

Submitted: May 17, 2006

Decided: June 16, 2006

Before MOTZ and KING, Circuit Judges, and HAMILTON, Senior Circuit
Judge.

Affirmed by unpublished per curiam opinion.

James F. Brehm, Greenville, South Carolina, for Appellant.
Elizabeth Jean Howard, OFFICE OF THE UNITED STATES ATTORNEY,
Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Derrick Earl Miller appeals the 754-month sentence imposed after he pled guilty to armed bank robbery (Counts 1, 3, 5), in violation of 18 U.S.C. §§ 2, 2113(a), (d) (2000), and using a firearm during a crime of violence (Counts 2, 4, 6), in violation of 18 U.S.C. § 2 and 18 U.S.C.A. § 924(c)(1)(A) (West 2000 & Supp. 2005). Miller's counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), suggesting that the consecutive sentences imposed pursuant to § 924(c) violate the Eighth Amendment's prohibition against cruel and unusual punishment. Counsel states, however, that in his view, there are no meritorious issues for appeal. Miller has filed pro se supplemental briefs. We affirm.

Miller did not object at sentencing to the imposition of multiple consecutive sentences on the § 924(c) counts; thus, our review is for plain error. United States v. Hughes, 401 F.3d 540, 547 (4th Cir. 2005). "This court has held that proportionality review is not available for any sentence less than life imprisonment without the possibility of parole." United States v. Ming Hong, 242 F.3d 528, 532 (4th Cir. 2001). Because Miller's sentence is less than life imprisonment, the proportionality of his sentence is not reviewable on appeal.

In his pro se supplemental briefs, Miller contends that the second superseding indictment is multiplicitous and that the

district court was biased against him. Our review of the record leads us to conclude that these claims are without merit. Miller also asserts that counsel provided ineffective assistance. We "may address [such claims] on direct appeal only if the lawyer's ineffectiveness conclusively appears from the record." United States v. Baldovinos, 434 F.3d 233, 239 (4th Cir.), cert. denied, 126 S. Ct. 1407 (2006). Because counsel's ineffectiveness is not apparent from the face of the record, we decline to review this claim on direct appeal.

In accordance with Anders, we have reviewed the entire record for any meritorious issues and have found none. Accordingly, we affirm Miller's convictions and sentence. We deny Miller's motion for copies of certain documents. This 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 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