

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-4156

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES EARL HINNANT,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:06-cr-00185-D)

Submitted: June 30, 2008

Decided: July 10, 2008

Before WILKINSON and MICHAEL, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Anthony Mark Brannon, HAIRSTON, LANE, BRANNON, PLLC, Raleigh, North Carolina, for Appellant. George Edward Bell Holding, United States Attorney, Anne Margaret Hayes, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Earl Hinnant pled guilty to possession of a firearm by a convicted felon and was sentenced to the statutory mandatory minimum for an armed career criminal--180 months. On appeal, his attorney has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), concluding that there are no meritorious issues for appeal, but questioning the adequacy of the Fed. R. Crim. P. 11 hearing and the failure of the district court to impose a variance sentence. Although informed of his right to do so, Hinnant has not filed a pro se supplemental brief.

Our review of the record shows that Hinnant's guilty plea was knowing and voluntary and taken in compliance with Rule 11. Regarding his sentence, Hinnant was sentenced to the statutory mandatory minimum. Absent an appropriate motion by the Government which was not made in this case, the district court lacked the authority to sentence Hinnant below the statutory mandatory minimum sentence. See United States v. Allen, 450 F.3d 565, 568-69 (4th Cir. 2006). Thus, it was not within the district court's discretion to impose a variance sentence.

In accordance with Anders, we have independently reviewed the record in the case and found no meritorious issues for appeal. Accordingly, we affirm the judgment of the district court. 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