UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-4217

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CLAYTON ATKINSON, a/k/a Howard Clark,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:08-cr-00070-BO-1)

Submitted: October 30, 2012 Decided: November 27, 2012

Before MOTZ, FLOYD, and THACKER, Circuit Judges.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

Thomas P. McNamara, Federal Public Defender, G. Alan DuBois, Assistant Federal Public Defender, James E. Todd, Jr., Research & Writing Attorney, Raleigh, North Carolina, for Appellant. Jennifer P. May-Parker, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Clayton Atkinson appeals his convictions for conspiracy to commit mail and wire fraud and to transport stolen funds and goods in interstate commerce, in violation of 18 U.S.C. § 371 (2006), and mail fraud, in violation of 18 U.S.C. §§ 2, 1341 (2006), and his 150-month sentence. Atkinson's attorney filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), asserting that there are no meritorious issues for appeal but questioning whether Atkinson's sentence is procedurally reasonable. The Government has moved to dismiss the appeal of the sentence as barred by Atkinson's waiver of the right to appeal included in the written plea agreement. We affirm in part and dismiss in part.

Upon review of the plea agreement and the transcript of the Fed. R. Crim. P. 11 hearing, we conclude that Atkinson knowingly and voluntarily waived his right to appeal his sentence and that the sentencing issue he seeks to raise on appeal falls squarely within the scope of his waiver of appellate rights. Accordingly, we grant the Government's motion to dismiss in part and dismiss the challenge to Atkinson's sentence.

Because Atkinson did not waive his right to appeal his convictions, we deny in part the Government's motion to dismiss. We have reviewed the record and conclude that Atkinson knowingly

and voluntarily entered valid guilty pleas and that the pleas were supported by a sufficient factual basis. See United States v. DeFusco, 949 F.2d 114, 116, 119-20 (4th Cir. 1991). In accordance with Anders, we have reviewed the entire record for non-waivable meritorious issues and have found none. Accordingly, we affirm the district court's judgment as to Atkinson's convictions.

This court requires that counsel inform Atkinson, in writing, of the right to petition the Supreme Court of the United States for further review. If Atkinson 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 Atkinson. 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