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USA v. Lamar

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-4370

UNITED STATES OF AMERICA

v.

LYNNE LAMAR,
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

(D.C. No. 02-cr-00268-1)

District Judge: Honorable Donetta W. Ambrose

Submitted Under Third Circuit L.A.R. 34.1(a)

October 27, 2006

Before: SMITH, WEIS, and NYGAARD Circuit Judges.

(Filed: November 13, 2006)

OPINION

WEIS, Circuit Judge.

Defendant Lamar pleaded guilty to violations of 18 U.S.C. §§ 371 and 1344. The United States released her from incarceration February 18, 2005 and she began her term of supervised release. Defendant subsequently violated the terms of that release and now appeals an order imposing a sentence of twenty-four months

imprisonment.

Counsel, who had been appointed to present this appeal, moved to withdraw and filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), asserting that he had found no appropriate grounds for reversal. Defendant proceeding pro se filed a “Motion for Clarification on Jurisdiction,” which we will treat as a brief.

We have carefully considered the possible issues addressed in counsel's Anders brief and in the defendant's informal pro se brief. We agree that there are no nonfrivolous issues for appeal, and we will therefore affirm.

In reviewing counsel's request for permission to withdraw, we must determine (1) whether counsel adequately fulfilled Third Circuit L.A.R. 109.2(a)'s requirements and (2) whether an independent review of the record presents any nonfrivolous issues for appeal. United States v. Youla, 241 F.3d 296, 300 (3d Cir. 2001). We must be satisfied that “counsel has thoroughly examined the record in search of appealable issues” and explained why the issues are frivolous. Id.

In his brief, counsel suggested the following three issues that could have been raised, but which lack arguable merit:

1. The District Court did not properly exercise its discretion in admitting evidence of conspiracy and finding violations of supervised release;
2. The consensual search of Lamar's home on May 20, 2005 was not constitutionally valid; and
3. The District Court erred in imposing its sentence on the defendant.

In her pro se brief, defendant contends that she is actually innocent and asks for the recusal of the district judge, contending that she was biased. Defendant also alleges a conspiracy between the Assistant United States Attorney and the district judge. Defendant further requests that a new attorney be appointed for her on appeal. None of the allegations in the motion are supported by any evidence and are simply conclusory statements.

We have carefully reviewed the record in this case, including the transcript of the hearing before the district judge, during which defendant testified and was represented by counsel. We conclude that the district judge did not err in her findings or rulings. The evidence in this case unquestionably established a violation of the terms of supervised release. The district judge found that the defendant's testimony was incredible and we have no reason to set aside that finding.

We have considered all of the arguments presented by defense counsel and by defendant and conclude that none of the contentions present nonfrivolous grounds for appeal. The issues presented lack legal merit and do not warrant the filing of a petition for writ of certiorari. See 3d Cir. L.A.R. 109.2(c).

Insofar as defendant requests appointment of additional counsel, the motion will be denied. We will grant counsel's motion to withdraw.

The judgment of the District Court will be affirmed.