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USA v. Reynoso

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1747

UNITED STATES OF AMERICA

v.

ARSENIO REYNOSO,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Criminal No. 02-cr-00463-1
(Honorable Stewart Dalzell)

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 13, 2004

Before: SCIRICA, *Chief Judge*, ALITO and AMBRO, *Circuit Judges*

(Filed September 24, 2004)

OPINION OF THE COURT

SCIRICA, *Chief Judge*.

In this appeal, defendant Arsenio Reynoso contests a 30-month sentence imposed under a bargained-for guilty plea to possession with the intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1). Reynoso's counsel filed a brief under *Anders v. California*, 386 U.S. 738 (1967), stating that, after a careful review of the case, he was unable to identify any non-frivolous issue for review.¹ We have jurisdiction under 28 U.S.C. § 1291.

Counsel in an *Anders* situation must thoroughly search the record to uncover the best arguments for his client, refer to those portions of the record that might arguably support the appeal, and direct the Court to the relevant law. *See United States v. Marvin*, 211 F.3d 778 (3d Cir. 2000). We are satisfied that counsel has fulfilled his *Anders* obligations. Counsel's brief addresses one issue, whether the District Court should have granted a greater departure. Because the District Court was aware of its discretion to depart downward, we lack jurisdiction to review the extent of the court's departure. *United States v. Stevens*, 223 F.3d 239, 248 (3d Cir. 2000); *United States v. Denardi*, 892 F.2d 269, 271-72 (3d Cir. 1989). We find no other possible grounds for appeal, nor any basis for appeal with respect to sentencing.

¹Reynoso was provided a copy of counsel's brief, and we afforded him an opportunity to file a pro se brief. He did not file a brief.

We will affirm the judgment of conviction. We lack jurisdiction to review the downward departure issue. Defense counsel's motion to withdraw is granted.