NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 01-2332, 01-2333, 01-2334, 01-2335 & 01- 2336

UNITED STATES OF AMERICA,

v.

CRAIG ALAN LEVI

Craig A. Levi,
Appellant

On Appeal From The United States District Court
For the Middle District of Pennsylvania
(D.C. Crim. Nos. 00-cr-00128, 00-cr-00174,
00-cr-00253, 00-cr-00266, 01-cr-00012)
District Judge: Honorable James F. McClure, Jr.

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 24, 2002

BEFORE: NYGAARD and STAPLETON, Circuit Judges,
and SLEET*, District Judge

(Filed February 5, 2002)

---

* Honorable Gregory M. Sleet, United States District Judge for the District of Delaware, sitting by designation.

MEMORANDUM OPINION OF THE COURT

STAPLETON, Circuit Judge:

Appellant Craig A. Levi pled guilty to wire fraud, aiding and abetting wire fraud, use of false identification to commit wire and mail fraud, interstate transportation of stolen property, and wire fraud while on release.

After filing a timely appeal, defense counsel filed a motion to withdraw as counsel and a brief in support of this motion pursuant to Anders v. California, 386 U.S. 738 (1967). Defense counsel determined after a conscientious review of the record that "there are no non-frivolous issues for review."

In accordance with the mandate of Anders, we have performed an independent review of the record to determine whether it presents any non-frivolous issues that would

justify review. Because we conclude that it does not, we will affirm the judgment of the District Court and grant defense's counsel motion to withdraw.

Counsel identified one arguable non-frivolous issue for review in his brief: whether the District Court abused its discretion by departing only one level downward in response to appellant's motion to depart on the ground that appellant's crimes were committed while he was suffering from a significantly reduced mental capacity. We lack jurisdiction to review an exercise of discretion by a District Court in granting or denying a departure. United States v. Denardi, 892 F.2d 269 (3d Cir. 1980).

The appeal will be dismissed for want of jurisdiction insofar as it asks us to review the failure to grant a greater departure. The judgment of the District Court will be affirmed and counsel's motion to withdraw will be granted. Further, pursuant to L.A.R. 109.2(b), we find that "the issues presented in the appeal lack legal merit for purposes of counsel filing a petition for writ of certiorari in the Supreme Court."

TO THE CLERK:

Please file the foregoing Memorandum Opinion.

/s/ Walter K. Stapleton
Circuit Judge