

NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1607

UNITED STATES OF AMERICA

v.

MICHAEL FARMER, Appellant

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Crim. No. 98-cr-00310-3)
District Judge: Honorable Stephen M. Orlofsky

Submitted Under Third Circuit LAR 34.1(a)
February 4, 2002
Before: BECKER, Chief Judge, McKEE and BARRY,
Circuit Judges.

(Filed: February 12, 2002)

MEMORANDUM OPINION

BECKER, Chief Judge.

This is an appeal by defendant Michael Farmer from the judgment of the District Court in a criminal case following a bargained-for guilty plea. Farmer's counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating, inter alia:

[D]efense counsel is compelled to advise this Court that the record has been closely inspected and independent research has been conducted, which has resulted in the conclusion that the instant appeal is wholly frivolous.

Having represented the Appellant at the District Court level sentencing, defense counsel is personally aware of all facts related to this matter. Under these circumstances and because court-appointed appellate counsel has conscientiously determined that there is no merit to the appeal, it is incumbent upon counsel to request permission to withdraw. *Id.* at 744. See *Penson v. Ohio*, 488 U.S. 75, 80 (1988).

After thorough examination of the proceedings, we agree with counsel that there are no non-frivolous issues on appeal. Judge Orlofsky's plea colloquy was thorough and precise, and there has been no suggestion of any problem with it. There is no doubt that the plea colloquy met the requirements of Fed. R. Crim. Pro. 11. Moreover, a review of the sentencing hearing transcript reveals that the Court imposed a sentence that met the requirements of Fed. R. Crim. Pro. 32. Although Farmer had raised an argument about the legality of the search, by his plea of guilty Farmer waived his right to appeal the District Court's denial of a suppression motion.

Farmer's contention about whether the substance involved was crack cocaine is foreclosed by his explicit stipulation and admissions of that fact; he stipulated in the plea agreement and admitted both during sentencing and in his Rule 11 proceedings that the

narcotic was crack cocaine. Furthermore, the District Court did not err in denying Farmer's motion to suppress evidence. As counsel notes, Farmer pled guilty and thereby waived his right to appeal the suppression determination. Indeed, Farmer explicitly waived his right to file an appeal or collateral attack against his sentence, provided that his total offense level was equal to or less than a level 32 (Farmer's total offense level was 32), and we have since held that such a waiver is enforceable. See *United States v. Khattak*, 278 F.3d 557 (3d Cir. 2001).

Finally, Farmer's contentions, interposed at sentencing about the equities (and relative responsibility), while properly made to the sentencing judge, cannot affect the outcome of the sentence.

Our jurisprudence requires that counsel in an Anders situation adequately attempt to uncover the best arguments for his or her client. See *United States v. Donald Wayne Marvin*, 211 F.3d 778 (3d Cir. 1999). However, having read the entire record, we are satisfied that counsel has fulfilled his Anders obligations. We will therefore grant counsel's request to withdraw, and will affirm the judgment on the merits.

TO THE CLERK:

Please file the foregoing Opinion.

BY THE COURT:

/s/ Edward R. Becker
Chief Judge
MEMORANDUM

DATE: February 11, 2002

TO: Marcy Waldron

FROM: Judge Becker

RE: United States v. Michael Farmer, No. 01-1607
Submitted Feb. 4, 2002

Dear Marcy:

Please file the enclosed Mem.Op. in the above case. The signed original will be delivered.

Sincerely,

Edward R. Becker

ERB:afr

cc: Judge McKee
Judge Barr