

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-3998

UNITED STATES OF AMERICA

v.

JOHEL VALENTIN
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(Criminal Action No. 00-377-1)
District Judge: Judge John R. Padova

Submitted Under Third Circuit LAR 34.1(a)
October 29, 2002

Before: NYGAARD, GARTH, and MICHEL, Circuit Judges

(Opinion Filed: October 31, 2002)

OPINION

Garth, Circuit Judge:

On October 3, 2000, a jury convicted Johel Valentin of violation of 18 U.S.C. 922(g)(1), possession of a firearm by a convicted felon. After a supplementary hearing, the jury subsequently found that Valentin had been convicted previously of at least three serious offenses, thus triggering the sentencing provisions of 18 U.S.C. 924(e). On October 25, 2001, the district court sentenced Valentin to a 20-year prison term.

Valentin's timely appeal followed. We will affirm the judgment of the district court, and will grant the motion of Valentin's counsel, William T. Cannon, Esq., to withdraw as counsel.

I.

We have jurisdiction to hear this appeal pursuant to 28 U.S.C. 1291.

Valentin's counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), expressing his belief that there were no non-frivolous issues presented for our review. As required by *Anders*, counsel directed us to portions of the record that might arguably support an appeal.

Counsel points to one possible issue for appeal. Counsel notes that defense counsel below requested that the district court instruct the jury that it must find that there was a "substantial impact" on commerce to meet the "interstate nexus" element of 18 U.S.C. 922(g)(1), and the district court rejected this request. Counsel suggests that the issue of the jury instruction might arguably support an appeal, but recognizes that this contention is "at odds with the applicable law governing this issue." *Anders Br.* at 12-14.

We agree with Valentin's counsel. In *United States v. Singletary*, 268 F.3d 196 (3d Cir. 2001), we rejected a similar challenge to jury instructions concerning the interstate nexus element of 922(g)(1). See *id.* at 198, 205. Singletary thus forecloses a successful appeal on the grounds identified by counsel.

Valentin has not filed a pro se brief raising any additional issues for appeal. Our review of the record also reveals no non-frivolous basis for appeal. We find that counsel, as required by *Anders*, conducted a conscientious review of the record and correctly concluded that there were no non-frivolous issues for appeal. *Anders*, 386 U.S. at 744. Counsel has complied with the procedures specified in *Anders*.

II.

For the foregoing reasons, we will affirm the judgment of the district court and grant Cannon's motion to withdraw as counsel.

/s/Leonard I. Garth
Circuit Judge