

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-3383

UNITED STATES OF AMERICA

v.

ERIC JEWELL,

Appellant

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Criminal Action No. 02-cr-00433)
District Judge: Honorable Petrese B. Tucker

Submitted Under Third Circuit LAR 34.1(a)
September 28, 2007

Before: AMBRO, JORDAN and ROTH, Circuit Judges

(Filed October 26, 2007)

OPINION

AMBRO, Circuit Judge

Eric Jewell pled guilty to two counts of robbery in violation of 18 U.S.C. § 1951

and two counts of carrying and using a gun during a crime of violence in violation of 18 U.S.C. § 924(c). He was sentenced to 181 months' imprisonment. Jewell appealed, and his counsel filed an *Anders* motion seeking to withdraw as counsel, asserting that all potential grounds for appeal are frivolous. We grant that motion and affirm the judgment of the District Court.

Because we write solely for the parties, we recite only those facts necessary to our decision. In 2002, a grand jury in the Eastern District of Pennsylvania returned a four-count indictment against Jewell and his two co-defendants, charging him with the crimes to which he pled guilty. The indictment alleged that Jewell and his co-defendants robbed a Payless Shoe Store in Philadelphia and attempted to rob a Houlihan's restaurant in Philadelphia as well. Jewell entered into a plea agreement with the Government, and the District Court accepted his guilty plea on November 7, 2002, after conducting a Rule 11 colloquy to determine that his plea was made knowingly, voluntarily, and with a sufficient factual basis. Before accepting his plea, the District Court advised Jewell that he was facing a mandatory minimum sentence of 32 years' imprisonment (with a maximum sentence of a lifetime of imprisonment), a \$1,000,000 fine, a five-year term of supervised release, and a mandatory special assessment of \$400.

As part of his plea agreement, Jewell cooperated with the Government to provide information concerning the offenses for which he was charged as well as other crimes of which he had knowledge. At the sentencing hearing, the Government stated that Jewell

had provided substantial assistance in the investigation and prosecution of his co-defendants. Additionally, Jewell provided the Government information about his participation and the identities of other co-conspirators in approximately 20 unsolved armed robberies of stores and restaurants in Philadelphia. Due to Jewell's assistance, the Government filed a 5K1.1 motion as well as a motion for downward departure from a mandatory minimum sentence under 18 U.S.C. § 3553(e), both of which the District Court granted. The Court adopted the recommended sentence from the pre-sentence report, sentencing Jewell to a 181-month prison term, representing 60 months for Counts I and III, 84 months for Count II, and 37 months for Count IV, a five-year term of supervised release, and a \$400 mandatory special assessment.

Jewell filed this timely appeal, and his counsel filed a motion to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967). Under *Anders*, if counsel “finds [a] case to be wholly frivolous, after a conscientious examination” of the potential grounds for appeal, he should “advise the court and request permission to withdraw.” *Id.* at 744. This request must be accompanied by “a brief referring to anything in the record that might arguably support the appeal,” *id.*, “explain[ing] to the court why the issues are frivolous,” *United States v. Marvin*, 211 F.3d 778, 781 (3d Cir. 2000), and demonstrating that he has “thoroughly scoured the record in search of appealable issues,” *id.* at 780. A copy of counsel's brief must be furnished to the appellant, who must be given time to raise nonfrivolous arguments in a *pro se* brief. *Anders*, 386 U.S. at 744; Third Circuit

LAR 109.2(a).¹

We “confine our scrutiny to those portions of the record identified by an adequate *Anders* brief . . . [and] those issues raised in Appellant’s *pro se* brief.” *United States v. Youla*, 241 F.3d 296, 301 (3d Cir. 2001) (citing *United States v. Wagner*, 103 F.3d 551, 553 (7th Cir. 1996)). We do not “comb the record . . . for possible nonfrivolous issues that both the lawyer and his client may have overlooked,” as “[our] duty is merely to determine whether counsel is correct in believing those grounds [raised are] frivolous.” *Wagner*, 103 F.3d at 552–53. We grant counsel’s *Anders* motion to withdraw if we believe “that the attorney has provided the client with a diligent and thorough search of the record for any arguable claim,” *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988), and if we conclude “that the appeal lacks any basis in law or fact,” *id.* at 438 n.10.

After an independent examination of the record, it is clear that counsel has satisfied his *Anders* burden and that no nonfrivolous issues from which to appeal exist. The District Court had jurisdiction to accept Jewell’s guilty plea, and did so after a thorough Rule 11 colloquy determining that the plea was knowing, voluntary, and with a substantial factual basis. The Court treated the Sentencing Guidelines as advisory, adequately considered the § 3553(a) factors, and properly exercised its discretion in

¹ Jewell has not filed a brief on his own behalf, despite having been informed of his right to file a formal or informal brief. *See* Clerk’s Office Letter (December 1, 2006).

granting the Government's motions for downward departure. The sentence imposed was below both the Guidelines range and the mandatory minimum for the offenses committed.

Because there are no nonfrivolous issues for appeal, Jewell's sentence is hereby affirmed, and counsel for appellant is granted leave to withdraw.