

April 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-30748
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LIONEL BROWN, also known as Fat,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 01-CR-268-2

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Lionel Brown has requested leave to withdraw as counsel and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967).

Brown has filed a response to counsel's motion, arguing that:

(1) the district court erred in increasing his offense level by two pursuant to U.S.S.G. § 2D1.1 and (2) the increase constitutes

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

an upward departure, which is appealable under the terms of the plea agreement.

The waiver of appeal provision contained in the plea agreement prohibits Brown from raising his substantive claim on appeal. See United States v. Gaitan, 171 F.3d 222, 223 (5th Cir. 1999). Our independent review of the briefs and the record discloses no non-frivolous issues for appeal. Counsel's motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities, and the appeal is DISMISSED. See 5TH CIR. R. 42.2.

ANDERS MOTION GRANTED; APPEAL DISMISSED.