UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40886
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

YOLANDA EVONNE GREEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(1:93-CR-171)

(April 20, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Yolanda Evonne Green appeals her conviction for possession of cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). Court-appointed counsel's ***Anders*** motion to withdraw is **GRANTED**, and the appeal is **DISMISSED**.

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

Court-appointed counsel for Green has moved to withdraw, and has filed a brief in compliance with ***Anders v. California***, 386 U.S. 738 (1967). Green did not file a response raising any issues.[2]

In his brief, counsel reviewed each stage of Green's case. The only significant points deal with the denial of a motion to suppress, the sufficiency of the evidence, and the calculation of Green's sentence. We have reviewed independently counsel's brief and the record, and find no nonfrivolous issue.

II.

With respect to the suppression of evidence, the record contains testimonial evidence, as well as a videotape, demonstrating that Green voluntarily consented to the search of the vehicle and her purse located in it.

As for the sufficiency of the evidence, because Green failed to move for a judgment of acquittal at the close of the evidence, on appeal, we would review her conviction only for a "manifest miscarriage of justice." ***United States v. Thomas***, 12 F.3d 1350, 1358 (5th Cir.), *cert. denied*, 114 S. Ct. 1861 (1994) and 114 S. Ct. 2119 (1994). "Such a miscarriage would exist only if the

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[2] Green submitted a letter seeking to preserve the right to raise by a 28 U.S.C. § 2255 motion any issues that could have been brought on direct appeal. On January 20, 1995, this court advised Green that she could not preserve issues for a subsequent proceeding and directed her to file her *pro se* brief advising this court of the issues she wished to raise on appeal. Subsequently, on February 26, 1995, Green wrote this court again inquiring on the status of her appeal. This court's clerk's office confirmed that the January 20 order was mailed directly to Green, and not just to her attorney. Thus, we proceed as though Green was aware of the need to file a brief.

record is devoid of evidence pointing to guilt, or ... [if] the evidence on a key element of the offense was so tenuous that a conviction would be shocking." ***Id.*** (quoting ***United States v. Galvan***, 949 F.2d 777, 782 (5th Cir. 1991)). Not only was the cocaine found in Green's purse, but she also made incriminating remarks following her arrest and the reading of ***Miranda*** warnings.

Finally, a review of the sentencing proceedings reveals no issue of arguable merit. In district court, Green objected to a factual allegation in the presentence report. The district judge found that the objection did not defeat nor affect the application of the guidelines unless the court intended to use that information for determining an appropriate sentence; which it stated it did not. The overruling of Green's objection does not present a point of arguable merit. As for entitlement to a downward departure, there is no indication that the district court erroneously believed it could not depart downward based on Green's family responsibilities. And, concerning Green's motion to downward departure based on her status as a minor or minimal participant, even though the district court denied the motion, the court, in fact, reduced her offense level by four based on her minimal role in the offense.

III.

For the foregoing reasons, counsel is excused from further responsibilities herein; the appeal is

DISMISSED.