

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

March 17, 2015

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JIMMY DALE STRAHAN,

Defendant - Appellant.

No. 14-7062

(D.C. No. 6:13-CR-00046-RAW-1)

(E.D. Okla.)

ORDER DISMISSING APPEAL

Before **MATHESON, O'BRIEN**, and **PHILLIPS**, Circuit Judges.

Jimmy Dale Strahan fraudulently enticed several individuals to invest in his saltwater disposal company.¹ But, instead of using the money to further the business, he used it for his own personal pleasures, namely to feed his gambling addiction. He pled guilty (without the benefit of a plea agreement) to one count of wire fraud. See 18 U.S.C. § 1343. The presentence report (PSR) calculated an advisory guideline range of 27 to 33 months imprisonment. He did not object to the PSR. He moved for a downward variance to 18 months imprisonment based on his good intentions, age (63-years-old at the time of sentencing), health (diabetes, heart murmur, high blood pressure, and bad

¹ Saltwater is a by-product of the oil drilling process.

knees), and gambling addiction. The district judge denied the motion, sentenced him to the bottom of the guideline range, and ordered him to pay \$685,347.25 in restitution.

Appointed counsel reviewed the record and found no arguable issue for appeal. Based on that review he filed an *Anders*² brief and has moved to withdraw. Although invited to do so, Strahan has not filed a response. The government has also declined to respond.

Our task in an *Anders* case is to “conduct a full examination of the record to determine whether defendant’s claims are wholly frivolous.” *United States v. Calderon*, 428 F.3d 928, 930 (10th Cir. 2005). If they are, we may grant counsel’s motion to withdraw and dismiss the appeal. *Id.* “Frivolous means lacking a legal basis or legal merit; not serious; not reasonably purposeful.” *United States v. Lain*, 640 F.3d 1134, 1137 (10th Cir. 2011) (quotations omitted). After a careful review of the entire record, we find no reason to question the voluntariness of Strahan’s guilty plea or the procedural or substantive reasonableness of his sentence. Like counsel, we see no non-frivolous grounds for appeal.

We **GRANT** the motion to withdraw and **DISMISS** this appeal.

Entered by the Court:

Terrence L. O’Brien
United States Circuit Judge

² See *Anders v. California*, 386 U.S. 738 (1967).