

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**AUG 25 2004**

**PATRICK FISHER**  
Clerk

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEAN EDWARD LETSCHKA, aka  
Sam Hammer,

Defendant - Appellant.

No. 04-1039

(D.C. No. 03-CR-139-RB)

(D. Colorado)

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**ORDER AND JUDGMENT** \*

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Before **TACHA**, Chief Judge, **BRISCOE** and **HARTZ**, Circuit Judges.

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Defendant Dean Edward Letschka pleaded guilty to receiving child pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A). He stipulated in the plea agreement to a sentence of 96 months. At the sentencing hearing, however, Defendant suggested that the court sentence him to a shorter period of incarceration. He informed the court that it was “not bound” by the “federal sentencing guideline numbers [that had] been crunched and stretched into a very

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

long period of incarceration suggested by the prosecution,” and asked the court to impose a “lighter sentence.” R. Vol. III at 12. Notwithstanding Defendant’s request, the district court sentenced him to 96 months’ imprisonment, in accordance with the stipulation. In imposing the sentence, the court noted that “[t]here [was] no formal request, and certainly no cogent rationale, to depart from the guideline range or to deviate from the sentence bargained for by both the government and the defendant in the plea agreement.” *Id.* at 19-20.

Defendant now appeals his sentence. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Defense counsel has filed an *Anders* brief indicating her belief that there are no non-frivolous issues to be raised on appeal. *See Anders v. California*, 386 U.S. 738, 744 (1967). Although *Anders* entitles Defendant to raise additional points in response to counsel’s *Anders* brief, *see id.*, Defendant has made no such filing.

We agree with counsel that Defendant has no non-frivolous claims to pursue on appeal. Defendant simply received the sentence for which he bargained. There is no indication in the record that he did not knowingly and voluntarily enter into the plea agreement. And to the extent Defendant’s remarks at the sentencing hearing may be construed as a request for a downward departure, we lack jurisdiction to review the district court’s discretionary denial

of a downward departure unless the denial was based on an illegal factor or an incorrect application of the Guidelines. *United States v. Guidry*, 199 F.3d 1150, 1161 (10th Cir. 1999). We see no basis for such an argument in this case.

Accordingly, agreeing with counsel that Defendant's claims are frivolous, we GRANT counsel's request to withdraw and AFFIRM the judgment below.

ENTERED FOR THE COURT

Harris L Hartz  
Circuit Judge