

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-3648

United States of America,

Appellee,

v.

David Ellison,

Appellant.

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Appeal from the United States
District Court for the
Eastern District of Missouri.

[UNPUBLISHED]

Submitted: November 2, 2006

Filed: November 3, 2006

Before MURPHY, BYE, and MELLOY, Circuit Judges.

PER CURIAM.

David Ellison appeals the 33-month prison sentence the district court¹ imposed after he pleaded guilty to one count of bank fraud, in violation of 18 U.S.C. § 1344. His counsel has moved to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the court erred in sentencing Ellison to imprisonment instead of placing him on home confinement so that he would be able to continue working to pay restitution and support his family.

¹The Honorable Carol E. Jackson, Chief Judge, United States District Court for the Eastern District of Missouri.

We conclude that the sentence is not unreasonable: the district court properly considered the 18 U.S.C. § 3553(a) factors in sentencing Ellison at the bottom of the Guidelines range, and nothing in the record rebuts the presumption that the sentence is reasonable. See United States v. Booker, 543 U.S. 220, 260-64 (2005) (appellate courts should review post-Booker sentences for unreasonableness; district courts must consult Guidelines and take them into account when sentencing, along with other § 3553(a) factors); United States v. Lincoln, 413 F.3d 716, 717-18 (8th Cir.) (sentence within applicable Guidelines range is presumptively reasonable and burden is on defendant to rebut that presumption), cert. denied, 126 S. Ct. 840 (2005); United States v. Tobacco, 428 F.3d 1148, 1151 (8th Cir. 2005) (presumption of reasonableness can be rebutted if district court failed to consider relevant factor that should have received significant weight, gave significant weight to improper or irrelevant factor, or considered only appropriate factors but committed clear error of judgment in weighing them).

Having reviewed the record under Penon v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues. Accordingly, we affirm the district court's judgment and we grant counsel leave to withdraw.
