

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 10-2336

United States of America,

Appellee,

v.

Celio Ramos Guizar,

Appellant.

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Appeal from the United States
District Court for the
Southern District of Iowa.

[UNPUBLISHED]

Submitted: December 21, 2010

Filed: December 28, 2010

Before LOKEN, MURPHY, and BENTON, Circuit Judges.

PER CURIAM.

In this direct criminal appeal, Celio Guizar challenges the 120-month statutory minimum prison term that the district court¹ imposed following his guilty plea to possessing with intent to distribute at least 500 grams of cocaine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B); and unlawful entry after deportation in violation of 8 U.S.C. § 1326(a). Counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), in which he argues that the sentence was unreasonable because it was greater than necessary to promote the goals of 18 U.S.C. § 3553(a).

¹The Honorable John A. Jarvey, United States District Judge for the Southern District of Iowa.

We reject counsel's argument, because the district court did not have discretion to sentence Guizar below the statutory minimum of 120 months in prison, see 21 U.S.C. § 841(b)(1)(B); United States v. Chacon, 330 F.3d 1065, 1066 (8th Cir. 2003); see also United States v. Gregg, 451 F.3d 930, 937 (8th Cir. 2006). It appears from a pro se filing by Guizar that he wishes to raise a claim of ineffective assistance of counsel, but the proper vehicle for such claims is in a proceeding under 28 U.S.C. § 2255. See United States v. Cain, 134 F.3d 1345, 1352 (8th Cir. 1998). He also appears to complain that he did not have an opportunity to review the presentence report with counsel prior to sentencing, but he did not seek more time to do so at the sentencing hearing, and he has not described how he suffered resulting prejudice. See Fed. R. Crim. P. 52(a) (error that does not affect substantial rights must be disregarded); United States v. Prado, 204 F.3d 843, 845 (8th Cir. 2000).

Finally, having reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues, and we therefore allow counsel to withdraw subject to counsel informing Guizar about procedures for seeking rehearing or filing a petition for certiorari. Accordingly, we affirm the judgment of the district court.
