

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 10-2490

United States of America,

Appellee,

v.

Justin L. Tarpeneing,

Appellant.

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

[UNPUBLISHED]

Submitted: October 14, 2010

Filed: October 19, 2010

Before LOKEN, MURPHY, and BENTON, Circuit Judges.

PER CURIAM.

After Justin Tarpeneing pled guilty to a weapons charge, the district court¹ sentenced him to 90 months in prison and 3 years of supervised release. On appeal, counsel has moved to withdraw and filed a brief under *Anders v. California*, 386 U.S. 738 (1967), arguing that the 90-month sentence is unreasonable.

The sentence is not unreasonable. See *United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc). Relying on evidence presented at the sentencing

¹The Honorable Dean Whipple, United States District Judge for the Western District of Missouri.

hearing, the district court calculated the Guidelines range over Tarpening's objections; and after recognizing the advisory nature of the Guidelines and noting that it had considered the 18 U.S.C. § 3553(a) sentencing factors, the court imposed a sentence within the Guidelines range. We see no procedural error, and Tarpening has not rebutted the presumptive substantive reasonableness of his within-Guidelines-range sentence. *See Rita v. United States*, 551 U.S. 338, 347-50 (2007); *United States v. Cadenas*, 445 F.3d 1091, 1094 (8th Cir. 2006).

We reviewed the record independently under *Penson v. Ohio*, 488 U.S. 75 (1988), and found no nonfrivolous issues for appeal. Accordingly, we affirm the judgment of the district court. We grant counsel's motion to withdraw, subject to counsel informing Tarpening about procedures for seeking rehearing or filing a petition for certiorari.
