

United States Court of Appeals
For the Eighth Circuit

No. 12-1450

United States of America

Plaintiff - Appellee

v.

Sandra Lee Calkins

Defendant - Appellant

Appeal from United States District Court
for the District of Minnesota - St. Paul

Submitted: August 14, 2012

Filed: August 17, 2012

[Unpublished]

Before MURPHY, BYE, and BENTON, Circuit Judges.

PER CURIAM.

Sandra Calkins directly appeals the below-Guidelines-range sentence the district court¹ imposed after she pleaded guilty to bank fraud, in violation of 18

¹The Honorable Paul A. Magnuson, United States District Judge for the District of Minnesota.

U.S.C. § 1344. Her counsel has moved to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the sentence is unreasonable. Calkins has filed a pro se supplemental brief in which she challenges loss-related findings underlying the district court's Guidelines calculations, and thus suggests that the court committed procedural sentencing errors. She also has moved for leave to appeal in forma pauperis and for appointment of new counsel.

Upon careful review, we conclude that the district court did not commit any significant procedural error in sentencing Calkins. See United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc) (in reviewing sentence, appellate court first ensures that district court committed no significant procedural error, such as improperly calculating Guidelines range); see also United States v. Alfonso, 479 F.3d 570, 573 (8th Cir. 2007) (district court properly declined to offset victims' gains on one investment against their losses on subsequent investments). We also conclude that the sentence is not substantively unreasonable. See Feemster, 572 F.3d at 461-62 (in considering substantive reasonableness of sentence, appellate court will take into account totality of circumstances, including extent of any variance), see also United States v. Moore, 581 F.3d 681, 684 (8th Cir. 2009) (per curiam) (where district court has sentenced defendant below advisory Guidelines range, it is nearly inconceivable that court abused its discretion in not varying further downward).

Having reviewed the record independently under Penon v. Ohio, 488 U.S. 75, 80 (1988), we have found no nonfrivolous issues for appeal. Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw, subject to counsel informing Calkins about procedures for seeking rehearing or filing a petition for certiorari. We also deny as moot Calkins's motion for leave to appeal in forma pauperis and for appointment of new counsel.