

United States Court of Appeals
For the Eighth Circuit

No. 15-1182

United States of America

Plaintiff - Appellee

v.

Scott Andrew Anderson

Defendant - Appellant

Appeal from United States District Court
for the District of North Dakota - Fargo

Submitted: June 24, 2015

Filed: June 30, 2015

[Unpublished]

Before WOLLMAN, LOKEN, and BENTON, Circuit Judges.

PER CURIAM.

Scott Anderson directly appeals after he pleaded guilty to federal drug charges, and the district court¹ sentenced him to 25 years in prison and 10 years of supervised

¹The Honorable Ralph R. Erickson, Chief Judge, United States District Court for the District of North Dakota.

release. His counsel has moved to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967). For the following reasons, we grant counsel's motion and affirm.

For reversal, counsel argues that the government breached its written plea agreement with Anderson by refusing to move for a downward departure under U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553(e) at sentencing. We review this issue, raised for the first time on appeal, only for plain error, see United States v. Lovelace, 565 F.3d 1080, 1085-87 (8th Cir. 2009), and we conclude that the government did not breach the agreement, because the agreement plainly vested full discretion in the government to decide whether substantial assistance had been provided under the specific terms of the plea agreement, and whether to file a departure motion, see United States v. Kelly, 18 F.3d 612, 617 (8th Cir. 1994); United States v. Romsey, 975 F.2d 556, 558 (8th Cir. 1992). Counsel draws our attention to United States v. Anzalone, 148 F.3d 940 (8th Cir. 1998), but that decision is inapposite. In this case, unlike Anzalone, the government did not concede that its decision to withhold a substantial-assistance motion was based entirely on factors unrelated to assistance. See United States v. Moeller, 383 F.3d 710, 712 (8th Cir. 2004).

Finally, having independently reviewed the record pursuant to Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues. The judgment of the district court is affirmed. We grant counsel's motion to withdraw.
