

United States Court of Appeals  
For the Eighth Circuit

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No. 16-3435

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United States of America

*Plaintiff - Appellee*

v.

Marvin Spencer

*Defendant - Appellant*

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

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Submitted: September 7, 2017

Filed: September 12, 2017

[Unpublished]

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Before COLLOTON, BOWMAN, and BENTON, Circuit Judges.

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PER CURIAM.

Marvin Spencer was found guilty of robbery, conspiracy to commit robbery, discharging a firearm during and in relation to a crime of violence, and being a felon in possession of ammunition, all in violation of 18 U.S.C. §§ 371, 922(g)(1), 924(c),

and 1951. The district court<sup>1</sup> sentenced Spencer to 257 months in prison. On appeal, counsel challenges the sufficiency of the evidence and the reasonableness of the sentence in a brief filed under *Anders v. California*, 386 U.S. 738 (1967). In his pro se brief Spencer challenges the district court's jurisdiction, counsel's effectiveness, and his 18 U.S.C. § 924(c) conviction in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

The evidence at trial showed that Spencer and an associate took \$58,358.50 worth of jewelry from a Minnesota store, and that Spencer shot a store employee in the leg and fired additional shots in the air during the robbery. The evidence included eye-witness testimony, video surveillance footage, and Spencer's admissions, which overwhelmingly supported the verdict. This court's review of the record shows that Spencer's sentence was not unreasonable. *See United States v. Feemster*, 572 F.3d 455, 460-61 (8th Cir. 2009) (en banc) (standard of review). Spencer's challenge to the district court's jurisdiction based on alleged indictment defects is meritless, his claim of ineffective assistance is best deferred for collateral proceedings. *See United States v. Looking Cloud*, 419 F.3d 781, 788-89 (8th Cir. 2005). His *Johnson*-based challenge to his section 924(c) conviction is foreclosed by *United States v. Prickett*, 839 F.3d 697, 699 (8th Cir. 2016) (per curiam), *petition for cert. filed*, (U.S. Dec. 30, 2016) (No. 16-7373).

This court has reviewed the record independently under *Penson v. Ohio*, 488 U.S. 75, 80 (1988), and finds no non-frivolous issues.

The judgment is affirmed, counsel's request to withdraw is granted, and Spencer's pending pro se motions are denied as moot.

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<sup>1</sup>The Honorable Susan Richard Nelson, United States District Judge for the District of Minnesota.