

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-3061

United States of America,

Appellee,

v.

Roger Roy Perry,

Appellant.

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

[UNPUBLISHED]

Submitted: August 10, 2007

Filed: August 16, 2007

Before MURPHY, SMITH, and SHEPHERD, Circuit Judges.

PER CURIAM.

Roger Roy Perry pleaded guilty to possessing counterfeit currency, in violation of 18 U.S.C. § 472, and conspiring to make and possess counterfeit currency, in violation of 18 U.S.C. §§ 371 and 471-472. The district court¹ sentenced him within the advisory Guidelines range to 51 months in prison and 3 years of supervised release. Perry challenges that sentence on appeal. His counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), and has moved to withdraw, and Perry has filed a pro se supplemental brief. For the reasons discussed below, we affirm.

¹The Honorable Ortrie D. Smith, United States District Judge for the Western District of Missouri.

First, the district court's discretionary denial of Perry's downward-departure motion is unreviewable. See United States v. Morell, 429 F.3d 1161, 1164 (8th Cir. 2005). Also, Perry has not overcome the appellate presumption of reasonableness that attaches to his sentence by showing that the court committed a clear error of judgment in determining that a within-Guidelines-range sentence was appropriate despite his poor health. See Rita v. United States, 127 S. Ct. 2456, 2468 (2007); United States v. Haack, 403 F.3d 997, 1003-04 (8th Cir. 2005). Next, the district court was entitled to engage in judicial fact-finding within an advisory Guidelines system. See United States v. Fazio, 487 F.3d 646, 657 (8th Cir. 2007). Last, Perry has not made a substantial threshold showing that the government acted unconstitutionally or in bad faith by not filing a substantial-assistance downward-departure motion. See United States v. Marks, 244 F.3d 971, 976 (8th Cir. 2001). After reviewing the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), we conclude that there are no non-frivolous issues for appeal. Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw.
