

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 10-1628

United States of America,

Appellee,

v.

Miguel Angel Carreon-Rico,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: September 3, 2010

Filed: October 5, 2010

Before BYE, BOWMAN, and COLLOTON, Circuit Judges.

PER CURIAM.

Miguel Angel Carreon-Rico directly appeals after the district court¹ sentenced him to ten years in prison upon his guilty plea to intentionally distributing 50 grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1), and criminal forfeiture of \$6,294, under 21 U.S.C. § 853. Counsel has moved to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), challenging the reasonableness of the sentence.

¹The Honorable Joseph F. Bataillon, Chief Judge, United States District Court for the District of Nebraska.

We note that the district court did not have authority to sentence Carreon-Rico below the statutory minimum of ten years in prison because the government had not moved for a departure based on substantial assistance and Carreon-Rico was not eligible for safety-valve relief. See 21 U.S.C. § 841(b)(1)(A) (mandatory minimum term of imprisonment of ten years for listed offenses); 18 U.S.C. § 3553(e) (upon government's motion, court can impose sentence below statutory minimum sentence to reflect defendant's substantial assistance), (f) (court shall impose sentence pursuant to Guidelines, without regard to statutory minimum sentence, if court finds, inter alia, that prior to sentencing hearing defendant truthfully provided to government all information and evidence defendant has concerning offenses that were part of same course of conduct); United States v. Chacon, 330 F.3d 1065, 1066 (8th Cir. 2003) (only authority to depart from statutory minimum is found in 18 U.S.C. § 3553(e) and (f)); see also United States v. Gregg, 451 F.3d 930, 937 (8th Cir. 2006) (United States v. Booker, 543 U.S. 220 (2005), does not relate to statutorily-imposed sentences).

Upon our independent review under Penson v. Ohio, 488 U.S. 75, 80 (1988), we have found no nonfrivolous issue. Thus, we grant counsel's motion to withdraw, and the judgment is affirmed. In addition, Carreon-Rico's motion to strike the Anders brief is denied.
