

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 11-1544

United States of America,

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Appellee,

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v.

* Appeal from the United States

Phillip C. Running,

* District Court for the

* District of South Dakota.

Appellant.

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* [UNPUBLISHED]

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Submitted: September 6, 2011

Filed: September 29, 2011

Before WOLLMAN, SMITH, and GRUENDER, Circuit Judges.

PER CURIAM.

Phillip Running appeals the district court's¹ judgment entered after a jury found him guilty of producing child pornography, in violation of 18 U.S.C. § 2251(a). Running's counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the trial court lacked jurisdiction because Running was a juvenile at the time of the offense and was not prosecuted until he was an adult.

¹The Honorable Roberto A. Lange, United States District Judge for the District of South Dakota.

The Juvenile Delinquency Act (JDA) provides that a federal court does not have jurisdiction over “[a] juvenile alleged to have committed an act of juvenile delinquency.” See 18 U.S.C. § 5032. A juvenile is defined as a person under 18 or, for the purpose of proceedings and disposition under the JDA for an act of juvenile delinquency, a person under 21. See 18 U.S.C. § 5031. This court has held that a defendant may not invoke the JDA if he is 21 or older when he is indicted. See United States v. Wright, 540 F.3d 833, 838-39 (8th Cir. 2008). Although Running was 14 years old when he committed the offense, he was 23 years old when he was indicted, and thus Wright precludes him from invoking the JDA. Running urges us to consider the history of the JDA, but this panel is unable to overrule the prior holding. See United States v. Lovelace, 565 F.3d 1080, 1085 (8th Cir. 2009).

After reviewing the record independently under Penson v. Ohio, 488 U.S. 75 (1988), we have found no nonfrivolous issues for appeal. Accordingly, the judgment is affirmed, and counsel is granted leave to withdraw.
