

United States Court of Appeals
For the Eighth Circuit

No. 12-1452

United States of America

Appellee

v.

Donald Andrews

Appellant

Appeal from United States District Court
for the Western District of Arkansas - Ft. Smith

Submitted: October 3, 2012

Filed: October 23, 2012

[Unpublished]

Before MURPHY, ARNOLD, and SMITH, Circuit Judges.

PER CURIAM.

After Donald Andrews pleaded guilty to conspiring to distribute more than 50 grams of a mixture or substance containing methamphetamine, in violation of

21 U.S.C. §§ 841(a)(1), (b)(1)(B)(viii), and 846, the district court¹ sentenced Mr. Andrews to the mandatory minimum of 60 months in prison and 5 years of supervised release. On appeal, counsel moves to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967).

The district court correctly concluded that the 5-year statutory minimum sentence applied, based on the unobjected-to drug quantity recommended in the presentence report. See 21 U.S.C. § 841(b)(1)(B)(viii); United States v. Douglas, 646 F.3d 1134, 1137 (8th Cir. 2011) (if defendant objects only to presentence report's recommendation, but not to facts themselves, court may accept facts as true). The court lacked discretion under the circumstances to sentence Mr. Andrews below the statutory minimum. See United States v. Watts, 553 F.3d 603, 604 (8th Cir. 2009). We have reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), and find no nonfrivolous issues for appeal. Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw, subject to counsel informing appellant about procedures for seeking rehearing or filing a petition for certiorari.

¹The Honorable Robert T. Dawson, United States District Judge for the Western District of Arkansas.