

United States Court of Appeals
For the Eighth Circuit

No. 12-3831

United States of America

Plaintiff - Appellee

v.

Michael S. Sacca

Defendant - Appellant

Appeal from United States District Court
for the District of Nebraska - Lincoln

Submitted: August 7, 2013

Filed: August 8, 2013

[Unpublished]

Before WOLLMAN, GRUENDER, and BENTON, Circuit Judges.

PER CURIAM.

Michael S. Sacca appeals the 63-month sentence the district court¹ imposed after he pled guilty to possessing pseudoephedrine with the intent, and having

¹The Honorable Richard G. Kopf, United States District Judge for the District of Nebraska.

reasonable cause to believe it would be used, to manufacture methamphetamine, in violation of 21 U.S.C. § 841(c)(1). Sacca's counsel has filed a brief under *Anders v. California*, 386 U.S. 738 (1967), arguing that the government failed to meet its burden of proof regarding the drug quantity involved in the offense.

The district court did not clearly err in its drug-quantity determination, as it relied on testimony and a government exhibit to find that Sacca purchased 58 grams of pseudoephedrine (contained in over-the-counter medications) for the purpose of methamphetamine manufacturing. *See United States v. Morales*, 445 F.3d 1081, 1085 (8th Cir. 2006) (standard of review; sentencing court may find facts by a preponderance of the evidence). Further, the sentence was not unreasonable. *See United States v. Hull*, 646 F.3d 583, 588 (8th Cir. 2011) (reviewing sentence under deferential abuse-of-discretion standard, and according presumption of reasonableness to sentence within advisory Guidelines range); *United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc) (describing procedural error). Independent review of the record under *Penon v. Ohio*, 488 U.S. 75 (1988), reveals no nonfrivolous issue.

This court affirms the judgment of the district court, and grants counsel's motion to withdraw.
