

United States Court of Appeals
For the Eighth Circuit

No. 13-3235

United States of America

Plaintiff - Appellee

v.

Derick James Mack

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Springfield

Submitted: April 27, 2015

Filed: May 11, 2015

[Unpublished]

Before WOLLMAN, MURPHY, and GRUENDER, Circuit Judges.

PER CURIAM.

A jury found Derick James Mack guilty of two counts of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), and the

district court¹ sentenced him to concurrent terms of 120 months in prison and 3 years of supervised release. Mack appeals, and his counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), challenging pretrial rulings and Mack's sentence on procedural and substantive grounds. For the reasons that follow, we affirm.

First, we agree with the district court that the issuance of both search warrants in this case was supported by probable cause, see United States v. Dukes, 758 F.3d 932, 936–37 (8th Cir. 2014), and we find no abuse of discretion in the denial of an evidentiary hearing, see United States v. Lucca, 377 F.3d 927, 931 (8th Cir. 2004). We also find the district court was correct in denying Mack's motions to dismiss, because there was no showing of prosecutorial misconduct, improper charges, a restoration of civil rights, or a violation of Mack's right to a speedy trial. See United States v. Adejumo, 772 F.3d 513, 521–22 (8th Cir. 2014), cert. denied, 2015 WL 1164389 (2015); United States v. Darden, 688 F.3d 382, 387 (8th Cir. 2012); United States v. Sonczalla, 561 F.3d 842, 844 (8th Cir. 2009).

As for Mack's sentence, upon de novo review of the district court's application of the Guidelines, and clear-error review of its findings of fact, see United States v. Betts, 509 F.3d 441, 445 (8th Cir. 2007), we find no error in the district court's enhancement of Mack's offense level for his possession of three firearms, his possession of a stolen firearm, and his possession of the firearms in connection with another felony offense. See United States v. Vega, 720 F.3d 1002, 1003 (8th Cir. 2013); United States v. Mahone, 688 F.3d 907, 909–10 (8th Cir. 2012). We also find no abuse of discretion in the district court's decision to vary upward based on the court's articulated reasons. See United States v. Hentges, 779 F.3d 820, 822–23 (8th Cir. 2015).

¹The Honorable Brian C. Wimes, United States District Judge for the Western District of Missouri.

Finally, after conducting independent review under Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues. Accordingly, we affirm the judgment of the district court, we deny Mack's motion for appointment of new counsel, and we grant counsel's motion to withdraw, subject to counsel informing Mack about procedures for seeking rehearing or filing a petition for certiorari.
