

United States Court of Appeals
For the Eighth Circuit

No. 13-3472

United States of America

Plaintiff - Appellee

v.

Miguel Angel Hernandez Gonzalez, also known as Jose Encarnacno Gurule

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: May 30, 2014

Filed: June 3, 2014

[Unpublished]

Before GRUENDER, BOWMAN, and SHEPHERD, Circuit Judges.

PER CURIAM.

Miguel Angel Hernandez Gonzalez directly appeals the sentence that the district court¹ imposed after he pleaded guilty to a drug offense. His counsel has moved to

¹The Honorable Stephanie M. Rose, United States District Judge for the Southern District of Iowa.

withdraw, and has filed a brief under Anders v. California, 386 U.S. 739 (1967), arguing that the statutory-minimum prison sentence is unreasonable, and that the government unreasonably withheld its recommendation to grant Gonzalez relief from the statutory minimum under the “safety valve.”

Upon careful review, and setting aside the issue of whether Gonzalez waived the argument by withdrawing his initial objection to the probation officer’s recommendation against safety-valve relief, we conclude that Gonzalez failed to demonstrate that he qualified for the safety valve, see United States v. Aguilera, 625 F.3d 482, 488 (8th Cir. 2010), and that the district court lacked authority to sentence him below the statutory minimum, see United States v. Chacon, 330 F.3d 1065, 1066 (8th Cir. 2003). Having independently reviewed the record under Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues. Accordingly, we affirm.

As for counsel’s motion to withdraw, we conclude that allowing counsel to withdraw at this time would not be consistent with the Eighth Circuit’s 1994 Amendment to Part V of the Plan to Implement the Criminal Justice Act of 1964. We therefore deny counsel’s motion to withdraw as premature, without prejudice to counsel refiling the motion upon fulfilling the duties set forth in the Amendment.
