

United States Court of Appeals
For the Eighth Circuit

No. 15-1951

United States of America

Plaintiff - Appellee

v.

Fernando Canales-Mendoza

Defendant - Appellant

Appeal from United States District Court
for the Western District of Arkansas - Harrison

Submitted: March 23, 2016

Filed: March 30, 2016

[Unpublished]

Before LOKEN, BYE, and KELLY, Circuit Judges.

PER CURIAM.

A jury found Fernando Canales-Mendoza (Canales) guilty of distributing over 5 grams of actual methamphetamine, possessing with intent to distribute over 50 grams of actual methamphetamine, and conspiring to distribute methamphetamine.

The district court¹ thereafter imposed concurrent sentences totaling 120 months in prison--the mandatory statutory minimum, which represented a one-month downward variance from the Guidelines range--plus five years of supervised release. On appeal, in a brief filed under Anders v. California, 386 U.S. 738 (1967), Canales's counsel challenges the sufficiency of the evidence to support the convictions, and the substantive reasonableness of the sentence. In a pro se supplemental brief, Canales argues he was eligible for safety-valve relief. For the reasons that follow, we affirm.

Following careful review, we conclude that the evidence establishing three undercover buys of methamphetamine, with resale quantities involved, supported Canales's convictions. See United States v. Vore, 743 F.3d 1175, 1180-81 (8th Cir. 2014) (standard of review); United States v. Peeler, 779 F.3d 773, 776 (8th Cir. 2015) (conspiracy); United States v. Tomberlin, 130 F.3d 1318, 1319 (8th Cir. 1997) (distribution). As to sentencing issues, Canales did not meet his burden to prove that he qualified for safety-valve relief, given representations by both the government and defense counsel that Canales did not engage in the necessary proffer, see 18 U.S.C. § 3553(f)(5); U.S.S.G. § 5C1.2(a); United States v. O'Dell, 204 F.3d 829, 838 (8th Cir. 2000); and the reasonableness challenge to his statutory minimum sentence fails, see United States v. Vieth, 397 F.3d 615, 620 (8th Cir. 2005).

After independent review under Penon v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issue. Accordingly, the judgment is affirmed, and counsel's motion to withdraw is granted.

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