

United States Court of Appeals
For the Eighth Circuit

No. 15-2267

United States of America

Plaintiff - Appellee

v.

Aurelio Hernandez-Guinac

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Ft. Dodge

Submitted: November 6, 2015

Filed: November 12, 2015
[Unpublished]

Before WOLLMAN, BYE, and GRUENDER, Circuit Judges.

PER CURIAM.

Aurelio Hernandez-Guinac pled guilty to being found after illegal reentry, and at sentencing, the district court¹ granted the government's motion for an upward

¹The Honorable Mark W. Bennett, United States District Judge for the Northern District of Iowa.

departure under U.S.S.G. § 4A1.3(a) based on an under-represented criminal history, noting that the sentence could be viewed alternatively as an upward variance based on a weighing of the 18 U.S.C. § 3553(a) sentencing factors. Hernandez appeals, and his counsel has moved to withdraw, arguing in a brief filed under *Anders v. California*, 386 U.S. 738 (1967), that the 21-month sentence is substantively unreasonable.

After careful review, we conclude that the court did not abuse its discretion in granting an upward departure, *see United States v. Vasquez*, 552 F.3d 734, 738-39 (8th Cir. 2009) (discussing applicability of upward departures under § 4A1.3(a)), and the sentence is not substantively unreasonable, *see United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc) (abuse-of-discretion review). Further, having independently reviewed the record pursuant to *Penson v. Ohio*, 488 U.S. 75 (1988), we find no nonfrivolous issues.

The judgment is affirmed, and we grant counsel's motion to withdraw.
