

United States Court of Appeals
For the Eighth Circuit

No. 15-3027

Andre Griffin

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

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

Submitted: November 2, 2016

Filed: November 7, 2016

[Unpublished]

Before WOLLMAN, ARNOLD, and GRUENDER, Circuit Judges.

PER CURIAM.

Andre Griffin is serving a 150-month prison term imposed after he pleaded guilty to conspiracy to distribute methamphetamine. In a 28 U.S.C. § 2255 motion, Griffin claimed, as relevant, that his guilty plea was the product of his counsel's ineffective assistance for failing to investigate whether Griffin qualified as a career offender, because absent such status, his plea agreement was unknowing and

involuntary. The district court¹ denied relief upon concluding, in part, that Griffin qualified as a career offender under U.S.S.G. § 4B1.1 in light of his prior convictions. The court granted a certificate of appealability, however, on Griffin’s claim that he received ineffective assistance of counsel. On appeal, Griffin concedes that he had a qualifying “controlled substance offense,” but argues that his 2004 California conviction for assault with great bodily injury under Cal. Penal Code § 245(a)(1)--a “wobbler” statute--is not a qualifying felony “crime of violence,” and that his counsel was relatedly ineffective for failing to investigate.

Following careful review, see Walker v. United States, 810 F.3d 568, 575 (8th Cir.), cert. denied, 136 S. Ct. 2042 (2016), we agree with the district court that Griffin’s counsel did not provide ineffective assistance. There is no indication in the record that counsel would have been successful in taking the position that Griffin, who received a sentence of 3 years in prison on his prior assault conviction, was not a career offender within the meaning of the Guidelines. See U.S.S.G. § 4B1.2(a)(1); United States v. Grajeda, 581 F.3d 1186, 1189-90 (9th Cir. 2009); United States v. Adams, 716 F.3d 1066, 1070 (8th Cir. 2013) (per curiam).

The judgment is affirmed.

¹The Honorable Lyle E. Strom, United States District Judge for the District of Nebraska.