

United States Court of Appeals  
For the Eighth Circuit

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No. 15-3027

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Andre Griffin

*Petitioner - Appellant*

v.

United States of America

*Respondent - Appellee*

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

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Submitted: November 2, 2016

Filed: November 7, 2016  
[Unpublished]

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Before WOLLMAN, ARNOLD, and GRUENDER, Circuit Judges.

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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 court<sup>1</sup> 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.

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