

United States Court of Appeals
For the Eighth Circuit

No. 16-1135

United States of America

Plaintiff - Appellee

v.

Sonya Lee Hernandez

Defendant - Appellant

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

Submitted: December 20, 2016

Filed: December 20, 2016

[Unpublished]

Before SMITH, BOWMAN, and BENTON, Circuit Judges.

PER CURIAM.

After pleading guilty to conspiring to distribute methamphetamine, Sonya Hernandez appeals the district court's¹ below-Guidelines sentence. Hernandez's

¹The Honorable Linda R. Reade, Chief Judge, United States District Court for the Northern District of Iowa.

counsel has moved to withdraw and has filed a brief filed under *Anders v. California*, 386 U.S. 738 (1967), arguing that the district court erred by not departing further, and by imposing an unreasonable sentence. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

The extent of the district court's departure is not reviewable on appeal. *See United States v. Williams*, 324 F.3d 1049, 1050 (8th Cir. 2003) (per curiam) (extent of downward departure is not subject to review, unless defendant makes substantial showing that district court's refusal to depart further was based on unconstitutional motive). This court finds that the district court did not abuse its discretion in sentencing Hernandez because it imposed the below-Guidelines sentence after considering the 18 U.S.C. § 3553(a) factors. *See United States v. Miller*, 557 F.3d 910, 917 (8th Cir. 2009) (under substantive-reasonableness test, district court abuses its discretion if it fails to consider relevant § 3553(a) factor, gives significant weight to improper or irrelevant factor, or commits clear error of judgment in weighing factors); *United States v. Moore*, 581 F.3d 681, 684 (8th Cir. 2009) (per curiam) (“[W]here a district court has sentenced a defendant below the advisory guidelines range, it is nearly inconceivable that the court abused its discretion in not varying downward still further.”). Having independently reviewed the record pursuant to *Penson v. Ohio*, 488 U.S. 75 (1988), this court finds no non-frivolous issues for appeal.

The judgment is affirmed and counsel's motion to withdraw is granted.
