

United States Court of Appeals
For the Eighth Circuit

No. 16-1386

United States of America

Plaintiff - Appellee

v.

Marvin Donal Rivera Fuentes, also known as Marvin Donald Rivera Fuentes

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Davenport

Submitted: July 26, 2016

Filed: July 29, 2016

[Unpublished]

Before WOLLMAN, ARNOLD, and MURPHY, Circuit Judges.

PER CURIAM.

Marvin Donal Rivera Fuentes, a citizen of Honduras, pleaded guilty to a charge of illegally reentering the United States, in violation of 8 U.S.C. § 1326(a), (b)(1), and

the district court¹ sentenced him to 24 months in prison--representing a three-month upward variance from the top of the calculated advisory Guidelines range--to be followed by three years of supervised release. Rivera Fuentes's counsel moves for leave to withdraw, and in a brief filed under Anders v. California, 386 U.S. 738 (1967), he challenges the reasonableness of the prison sentence.

Having reviewed the record, we conclude that the district court did not abuse its discretion in imposing the 24-month sentence. See United States v. Allison, 814 F.3d 952, 953 (8th Cir. 2016) (standard of review). During the course of the sentencing hearing, the district court heard, and commented on, Rivera Fuentes's arguments for sentencing leniency. Ultimately however, the court was persuaded, and explained in detail that a three-month upward variance was appropriate because of Rivera Fuentes's history of drinking alcohol, driving while intoxicated, and driving while barred from doing so, which had resulted in multiple convictions, including one for involuntary manslaughter. See 18 U.S.C. § 3553(a) (court, in determining particular sentence to be imposed, shall consider, inter alia, history and characteristics of defendant, and need to protect public from further crimes of defendant); United States v. Mangum, 625 F.3d 466, 470 (8th Cir. 2010) (upward variance is reasonable where court makes individualized assessment of § 3553(a) factors based on facts presented, and considers defendant's proffered information).

We also conclude, upon review of the record as required by Penson v. Ohio, 488 U.S. 75 (1988), that there are no non-frivolous issues for appeal.

The judgment is affirmed, and counsel is granted leave to withdraw.

¹The Honorable Stephanie M. Rose, United States District Judge for the Southern District of Iowa.