

United States Court of Appeals
For the Eighth Circuit

No. 17-2499

United States of America

Plaintiff - Appellee

v.

Randy Robert Smith

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: February 26, 2018

Filed: March 2, 2018

[Unpublished]

Before GRUENDER, MURPHY, and SHEPHERD, Circuit Judges.

PER CURIAM.

Randy Smith directly appeals the within-Guidelines-range sentence the district court¹ imposed after he pled guilty to being a felon in possession of a firearm. His

¹The Honorable Beth Phillips, United States District Judge for the Western District of Missouri.

counsel has moved for leave to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the sentence is substantively unreasonable, that the district court erred in applying a sentencing enhancement, and that the district court erred by not properly considering Smith's request for a downward departure. In a pro se brief, Smith also challenges the sentencing enhancement, and claims that he received ineffective assistance of counsel.

To begin, we decline to consider Smith's ineffective-assistance-of-counsel claim on direct appeal. See United States v. Ramirez-Hernandez, 449 F.3d 824, 826-27 (8th Cir. 2006) (ineffective-assistance claims are usually best litigated in collateral proceedings, where record can be properly developed).

Next, we find no error in the district court's calculation of the Guidelines range. See United States v. Turner, 781 F.3d 374, 393 (8th Cir. 2015) (this court reviews district court's application of Guidelines de novo, and its findings of fact for clear error). We also conclude that the record demonstrates the district court considered Smith's request for a downward departure, and we find that the court's decision not to depart downward is unreviewable on appeal. See United States v. Wanna, 744 F.3d 584, 589 (8th Cir. 2014) (when district court is aware of discretion to depart downward under Guidelines and elects not to exercise discretion, then decision is unreviewable).

Further, we conclude that the district court did not impose a substantively unreasonable sentence. See United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc) (discussing appellate review of sentencing decisions); see also United States v. Callaway, 762 F.3d 754, 760 (8th Cir. 2014) (on appeal, within-Guidelines-range sentence may be presumed reasonable). In addition, we have independently reviewed the record under Penon v. Ohio, 488 U.S. 75 (1988), and

have found no nonfrivolous issues for appeal. Accordingly, we grant counsel's motion to withdraw, and we affirm.
