

United States Court of Appeals
For the Eighth Circuit

No. 17-3350

United States of America

Plaintiff - Appellee

v.

Cesar Gustavo Payan-Carrillo, also known as Erik Molina-Grado

Defendant - Appellant

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

Submitted: July 16, 2018

Filed: July 19, 2018

[Unpublished]

Before LOKEN, COLLOTON, and BENTON, Circuit Judges.

PER CURIAM.

In this direct criminal appeal, Cesar Payan-Carrillo challenges the sentence the district court¹ imposed after he pleaded guilty to illegal reentry. His counsel has

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

moved to withdraw and submitted a brief under Anders v. California, 386 U.S. 738 (1967), discussing whether the sentence was substantively unreasonable. Payan-Carillo has also filed a pro se supplemental brief, in which he argues that the sentence was substantively unreasonable, as the upward variance was not justified; and that counsel was ineffective for failing to object to the inclusion of a pending assault charge in the presentence report.

As to the reasonableness of the sentence, we conclude that the district court did not abuse its discretion in varying upward, as it properly considered the 18 U.S.C. § 3553(a) factors, and there was no indication that it overlooked a relevant factor, or committed a clear error of judgment in weighing relevant factors. See United States v. Feemster, 572 F.3d 455, 461, 464 (8th Cir. 2009) (en banc) (standard of review); see also United States v. Mangum, 625 F.3d 466, 469-70 (8th Cir. 2010).

We conclude Payan-Carillo's ineffective-assistance claim would be better litigated in a 28 U.S.C. § 2255 proceeding. See United States v. Ramirez-Hernandez, 449 F.3d 824, 826-27 (8th Cir. 2006). Furthermore, we have independently reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), and have found no non-frivolous issues for appeal. Accordingly, we grant counsel's motion to withdraw, and affirm.
