

United States Court of Appeals
For the Eighth Circuit

No. 18-3533

United States of America

Plaintiff - Appellee

v.

Gary Berry

Defendant - Appellant

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

Submitted: August 7, 2019

Filed: August 12, 2019

[Unpublished]

Before COLLOTON, WOLLMAN, and ERICKSON, Circuit Judges.

PER CURIAM.

Gary Berry directly appeals after he pled guilty to receipt of child pornography, and the district court¹ sentenced him to a prison term below the calculated Guidelines

¹The Honorable Roseann A. Ketchmark, United States District Judge for the Western District of Missouri.

range. His counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that Berry’s sentence is substantively unreasonable because the prison term is greater than necessary to achieve the purposes of sentencing. Counsel also requests leave to withdraw.

We conclude that the district court did not impose a substantively unreasonable sentence. See United States v. Feemster, 572 F.3d 455, 461-62 (8th Cir. 2009) (en banc) (sentences are reviewed under deferential abuse-of-discretion standard; discussing substantive reasonableness); see also United States v. McCauley, 715 F.3d 1119, 1127 (8th Cir. 2013) (noting that when district court has varied below Guidelines range, it is “nearly inconceivable” that court abused its discretion in not varying downward further). In addition, having independently reviewed the record under Penon v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues for appeal. Accordingly, we grant counsel leave to withdraw, and we affirm.
