

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 03-3976

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United States of America,	*	
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Appellee,	*	Appeal from the United States
	*	District Court for the District
v.	*	of Nebraska.
	*	
Jesus Ojeda-Martinez,	*	[UNPUBLISHED]
	*	
Appellant.	*	

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Submitted: February 3, 2005  
Filed: February 15, 2005

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Before MORRIS SHEPPARD ARNOLD, FAGG, and SMITH, Circuit Judges.

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PER CURIAM.

Jesus Ojeda-Martinez (Ojeda) appeals the sentence the district court\* imposed after Ojeda pleaded guilty to a drug charge. Ojeda's counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967). Ojeda has filed a supplemental brief challenging the district court's denial of safety-valve relief, and arguing amphetamine is improperly scheduled as a controlled substance. Having carefully reviewed the record, we conclude the district court did not clearly err in denying Ojeda safety-valve relief. See United States v. Gutierrez-Maldonado, 328

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\*The Honorable Joseph F. Bataillon, Chief Judge, United States District Court for the District of Nebraska.

F.3d 1018, 1019 (8th Cir. 2003) (per curiam). We also conclude the drugs Ojeda was convicted of distributing provide a proper basis for criminal penalties, as both substances are explicitly referenced in 21 U.S.C. § 841(b)(1)(A). Upon our independent review under Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues.

Accordingly, we affirm, and we grant counsel's motion to withdraw.

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