

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-2162

United States of America,

Appellee,

v.

Jose Gustavo Rubio,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: March 28, 2006

Filed: April 5, 2006

Before WOLLMAN, MURPHY, and COLLOTON, Circuit Judges.

PER CURIAM.

Jose Gustavo Rubio appeals the sentence imposed by the district court¹ after he pleaded guilty to conspiracy to distribute and possess with intent to distribute 500 grams or more of a methamphetamine mixture, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846, and to one count of criminal forfeiture. In a brief filed under Anders v. California, 386 U.S. 738 (1967), counsel argues that Rubio's 168-month prison sentence, imposed upon consideration of an advisory Guidelines imprisonment

¹The Honorable Laurie Smith Camp, United States District Judge for the District of Nebraska.

range of 168-210 months, is unreasonable with regard to 18 U.S.C. § 3553(a), and that Rubio should instead have been sentenced to the 120-month statutory minimum.

We note that the sentence imposed comports with Rubio's plea agreement and the unobjected-to calculations in the presentence report. We have found nothing in the record to rebut the presumption that the sentence is reasonable. See United States v. Lincoln, 413 F.3d 716, 717-18 (8th Cir.) (sentence within Guidelines range gives rise to presumption of reasonableness, which defendant must rebut), cert. denied, 126 S. Ct. 840 (2005). Although Rubio had no prior convictions, the instant offense involved a large quantity of methamphetamine, and the district court, having considered the section 3553(a) factors, showed some leniency by sentencing Rubio at the bottom of the advisory Guidelines range.

After reviewing the record independently under Penon v. Ohio, 488 U.S. 75 (1988), we have found no nonfrivolous issues. Accordingly, we affirm the judgment of the district court.