

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 09-3432

United States of America,

Appellee,

v.

Willie B. Haynes,

Appellant.

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

[UNPUBLISHED]

Submitted: March 3, 2010

Filed: March 8, 2010

Before MELLOY, BOWMAN, and SMITH, Circuit Judges.

PER CURIAM.

After Willie Haynes pleaded guilty to possessing with intent to distribute five grams or more of cocaine base, the District Court¹ varied below the advisory Guidelines sentencing range triggered by Haynes's career-offender status and sentenced him to 188 months in prison and eight years of supervised release. In a brief filed under Anders v. California, 386 U.S.738 (1967), counsel moves to withdraw and argues that the District Court erred at sentencing by denying Haynes's

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

motion for a departure or variance to 120 months in prison. Haynes has not filed a prose supplemental brief.

We do not review the District Court's discretionary decision not to grant a downward departure under section 4A1.3 of the sentencing Guidelines, see United States v. Butler, No. 09-1137, 2010 WL 431720, at *9 (8th Cir. Feb. 9, 2010), and the Court's sentence is not an abuse of discretion, see United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc); United States v. Haack, 403 F.3d 997, 1002-03 (8th Cir.), cert. denied, 546 U.S. 913 (2005). Further, having reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues for review.

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