

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

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No. 10-3676

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| United States of America, | *                                |
|                           | *                                |
| Appellee,                 | *                                |
|                           | * Appeal from the United States  |
| v.                        | * District Court for the Western |
|                           | * District of Missouri.          |
| Earl Martin Price, Jr.,   | *                                |
|                           | * [UNPUBLISHED]                  |
| Appellant.                | *                                |

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Submitted: March 31, 2011  
Filed: April 8, 2011

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Before LOKEN, MURPHY, and COLLOTON, Circuit Judges.

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PER CURIAM.

Earl Price, Jr., pleaded guilty to assaulting a corrections officer, in violation of 18 U.S.C. § 111(a)(1), (b), and the district court<sup>1</sup> sentenced him to 105 months in prison and 3 years of supervised release. His counsel moves to withdraw, and in a brief filed pursuant to Anders v. California, 386 U.S. 738 (1967), he argues that the sentence is unreasonable. In a supplemental pro se brief, Price argues that the sentence is too harsh because he is ill and takes medication. He also seeks appointment of new counsel.

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<sup>1</sup>The Honorable Richard E. Dorr, United States District Judge for the Western District of Missouri.

We conclude that the district court did not abuse its discretion in imposing the sentence, see United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc), because we find no procedural error or anything to rebut the presumption of reasonableness that attaches to Price's within Guidelines range sentence, see United States v. Lozoya, 623 F.3d 624, 626 (8th Cir. 2010) (discussing substantive reasonableness); United States v. Linderman, 587 F.3d 896, 901 (8th Cir. 2009) (within Guidelines range sentence is presumed reasonable on appeal).

In his pro se submissions, Price may be suggesting that his guilty plea was involuntary because of his mental condition, but any such argument is not cognizable on direct appeal because Price did not move in the district court to withdraw his plea. See United States v. Foy, 617 F.3d 1029, 1033-34 (8th Cir. 2010), cert. denied, 79 USLW 3477 (Feb. 22, 2011). Further, we have reviewed the record independently under Penon v. Ohio, 488 U.S. 75, 80 (1988), and have found no nonfrivolous issues for appeal.

Accordingly, we affirm the judgment of the district court, and we grant counsel leave to withdraw, subject to counsel informing Price about procedures for seeking rehearing or filing a petition for certiorari. We also deny Price's pending motion for counsel.

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