

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

No. 00-2025

United States of America,

Appellee,

v.

Dennis Ray Graven,

Appellant.

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Appeal from the United States
District Court for the
Southern District of Iowa.

[UNPUBLISHED]

Submitted: April 6, 2001
Filed: April 12, 2001

Before RICHARD S. ARNOLD, HANSEN, and MORRIS SHEPPARD ARNOLD,
Circuit Judges.

PER CURIAM.

Dennis Ray Graven pleaded guilty to conspiring to distribute methamphetamine and cocaine, in violation of 21 U.S.C. § 846, and the district court¹ sentenced him to 120 months imprisonment (the statutory minimum) and 4 years supervised release. On appeal, his counsel has filed a brief and moved to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967), and Graven has not filed a pro se supplemental brief.

¹The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

Counsel challenges, on due process and separation-of-powers grounds, 18 U.S.C. § 3553(e)'s requirement of a government motion before the district court may impose a sentence below the statutory minimum. This challenge is foreclosed by our precedent. See United States v. Kelley, 956 F.2d 748, 752 (8th Cir. 1992) (en banc) (upholding, against separation-of-powers and due process challenges, U.S.S.G. § 5K1.1 requirement of government motion before district court may depart from Guidelines); see also United States v. Marks, No. 00-2242, 2001 WL 300562, at *1 n.1 (8th Cir. Mar. 29, 2001) (equating § 5K1.1 and § 3553(e)); Kelley, 956 F.2d at 751 n.3 (same).

Having reviewed the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), we have found no nonfrivolous issues for appeal. Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.