

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-2442

United States of America,

Appellee,

v.

Robert Montgomery,

Appellant.

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Appeal from the United
District Court for the Western
District of Missouri.

[UNPUBLISHED]

Submitted: April 26, 2001

Filed: May 1, 2001

Before HANSEN, BEAM, and BYE, Circuit Judges.

PER CURIAM.

Robert Montgomery appeals the sentence of 70 months imprisonment and 3 years supervised release imposed on him by the district court¹ after he pleaded guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). On appeal, counsel moved to withdraw pursuant to Anders v. California,

¹The Honorable Fernando J. Gaitan, Jr., United States District Judge for the Western District of Missouri.

386 U.S. 738 (1967), filing a brief concerning ineffective-assistance and Miranda² issues, and challenging the length of Montgomery's sentence.

We conclude Montgomery's argument as to his counsel's performance, which he seeks to raise initially on appeal, should be presented in 28 U.S.C. § 2255 proceedings, see United States v. Martin, 59 F.3d 767, 771 (8th Cir. 1995); by pleading guilty he waived the Miranda challenge, see United States v. Vong, 171 F.3d 648, 652 (8th Cir. 1999); and his sentence at the bottom of the applicable Guidelines range is unreviewable, cf. United States v. Woodrum, 959 F.2d 100, 101 (8th Cir. 1992) (per curiam).

Having reviewed the record independently under Penson v. Ohio, 488 U.S. 75, 80 (1988), we have found no non-frivolous issues for appeal.

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

A true copy.

Attest:

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

²Miranda v. Arizona, 384 U.S. 436 (1966).