

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-2968

United States of America,	*	
	*	
Appellee,	*	Appeal from the United States
	*	District Court for the District
v.	*	of Nebraska.
	*	
Devoil Stanley Hicks,	*	[UNPUBLISHED]
	*	
Appellant.	*	

Submitted: November 30, 2001

Filed: December 5, 2001

Before LOKEN, HEANEY, and FAGG, Circuit Judges.

PER CURIAM.

Devoil Stanley Hicks pleaded guilty to conspiring to distribute and possess with intent to distribute cocaine base, in violation of 21 U.S.C. § 846 and 18 U.S.C. § 2. The district court sentenced Hicks to 360 months imprisonment and 5 years supervised release. Hicks appealed from the sentence imposed by the district court and we remanded for resentencing in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). See United States v. Hicks, No. 00-2400, 2000 WL 1872701, at *1 (8th Cir. Dec. 22, 2000) (unpublished per curiam opinion).

The district court resentenced Hicks to 204 months imprisonment and 5 years supervised release, and Hicks appeals. On appeal, Hicks's counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), and Hicks has filed a pro se supplemental brief, arguing his indictment and sentence still violate Apprendi. Without considering the effect of Hicks's verbal agreement at resentencing to waive his right to appeal his sentence (and to seek certain other postconviction relief) in exchange for a sentencing concession, we reject Hicks's appeal and affirm.

Specifically, Hicks stipulated at resentencing to the sentence he received and thus he may not challenge it here. See United States v. Nguyen, 46 F.3d 781, 783 (8th Cir. 1995). Further, Hicks's sentence does not violate Apprendi because it is below the 240-month statutory maximum for a cocaine-base conspiracy without regard to drug quantity. See United States v. Aguayo-Delgado, 220 F.3d 926, 934 (8th Cir.), cert. denied, 531 U.S. 1026 (2000).

Having reviewed the record independently under Penon v. Ohio, 488 U.S. 75 (1988), we find there are no non-frivolous issues.

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

A true copy.

Attest:

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