

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-2978

United States of America,

Appellee,

v.

Ruben Catalan-Castarena, also known
as Raul Diarcos-Alonso,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.
[UNPUBLISHED]

Submitted: February 14, 2002
Filed: February 27, 2002

Before LOKEN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

Ruben Catalan-Castarena appeals the sentence imposed by the district court¹ upon his guilty plea to possessing methamphetamine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). Pursuant to Anders v. California, 386 U.S. 738 (1967), counsel has moved to withdraw and filed a brief stating Catalan-Castarena believes that his sentence of 108 months was unfair because it was not commensurate with his lack of a criminal history, and that he was materially prejudiced by the

¹The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

ethical conflict of his prior counsel, who withdrew (citing a potential conflict of interest) before the change-of-plea hearing.

As to the first point, we note that Catalan-Castarena was granted relief under the safety-valve provision from the 10-year statutory mandatory minimum sentence; that there was no motion for downward departure; and that the sentence imposed--without objection--was at the bottom of the applicable Guidelines range. The sentence is thus unreviewable on appeal. See United States v. Woodrum, 959 F.2d 100, 101 (8th Cir.1992) (per curiam).

As to the second point, we note that Catalan-Castarena did not raise it at the withdrawal-of-counsel, plea, or sentencing hearings; and does not indicate how he was prejudiced by prior counsel's representation.

Having reviewed the record independently pursuantly to Penon v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues.

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

A true copy.

Attest:

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