

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-1642

United States of America,

Appellee,

v.

Sergio Hernandez-Arellano,

Appellant.

*
* Appeal from the United States
* District Court for the Western
* District of Arkansas.
*
* [UNPUBLISHED]
*
*
*

Submitted: August 20, 2002

Filed: August 26, 2002

Before WOLLMAN, RICHARD S. ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

Sergio Hernandez-Arellano pleaded guilty to illegal reentry following deportation for an aggravated felony, in violation of 8 U.S.C. § 1326(b)(2). The district court¹ sentenced him to 70 months imprisonment and 3 years supervised release, and fined him \$500. On appeal, counsel has filed a brief and moved to withdraw under Anders v. California, 386 U.S. 738 (1967). Defendant has filed a pro se supplemental brief, as well as a motion for appointment of counsel.

¹The Honorable Jimm Larry Hendren, Chief Judge, United States District Court for the Western District of Arkansas.

We address and reject seriatim the issues noted in counsel’s brief. First, based on our review of the record, we conclude that the guilty plea was valid. Second, defendant’s prior offense of transporting aliens constituted an aggravated felony for purposes of U.S.S.G. § 2L1.2(b)(1)(A). See 8 U.S.C. § 1101(a)(43)(N) (defining “aggravated felony”). Third, Apprendi v. New Jersey, 530 U.S. 466 (2000), is inapplicable here. See United States v. Raya-Ramirez, 244 F.3d 976, 977 (8th Cir.), cert. denied, 122 S. Ct. 223 (2001). Fourth, defendant’s dissatisfaction with the use of his prior convictions in calculating his criminal history constituted an impermissible collateral attack. See U.S.S.G. § 4A1.2, comment. (n.6); United States v. Jones, 28 F.3d 69, 70 (8th Cir. 1994) (per curiam).

Additionally, we are unpersuaded by the arguments presented in the pro se supplemental brief. Defendant’s issues with his counsel’s performance are not properly before us in this direct criminal appeal, see United States v. Martin, 59 F.3d 767, 771 (8th Cir. 1995), and defendant’s belief that his sentence (at the bottom of the applicable Guidelines range) was too harsh does not per se provide a jurisdictional basis for review, see 18 U.S.C. § 3742(a) (grounds for appeal of sentence by defendant).

After reviewing the record independently under Penson v. Ohio, 488 U.S. 75 (1988), we have found no nonfrivolous issues. Accordingly, we grant counsel’s motion to withdraw, we affirm the judgment, and we deny the motion for appointment of counsel.

A true copy.

Attest:

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