

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-2472

United States of America,

Appellee,

v.

Jose Luis Reyes-Sandoval,
also known as Edward Paul Franco,

Appellant.

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* Appeal from the United States
* District Court for the
* District of Nebraska.
* [UNPUBLISHED]
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Submitted: January 7, 2003
Filed: January 17, 2003

Before McMILLIAN, MURPHY, and RILEY, Circuit Judges.

PER CURIAM.

Jose Luis Reyes-Sandoval (Reyes) pleaded guilty to possessing with intent to distribute 500 grams or more of a substance containing methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1). After granting the government's downward-departure motion made under U.S.S.G. § 5K1.1, p.s., the district court¹ sentenced Reyes to the statutory minimum of 120 months imprisonment, to be followed by 5 years supervised release. On appeal, Reyes's newly appointed counsel

¹The Honorable Joseph F. Bataillon, United States District Judge for the District of Nebraska.

has moved to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that Reyes's original attorney suggested he would receive only a 5-year sentence.

Construing counsel's argument as a challenge to the voluntariness of Reyes's guilty plea, we note that the district court warned Reyes, at his guilty plea hearing, that he faced a 120-month mandatory-minimum sentence, and Reyes acknowledged that the court would decide his sentence, and that he could not withdraw his plea if he received a higher-than-expected sentence, see United States v. Granados, 168 F.3d 343, 345 (8th Cir. 1999) (per curiam); further, the court was not permitted to depart below the mandatory-minimum sentence absent a government motion under 18 U.S.C. § 3553(e), see United States v. Baker, 64 F.3d 439, 441 (8th Cir. 1995). Finally, any ineffective-assistance claim is not properly before us. See United States v. Cain, 134 F.3d 1345, 1352 (8th Cir. 1998).

Having carefully reviewed the record in accordance with Penson v. Ohio, 488 U.S. 75, 80 (1988), we have found no nonfrivolous issues. Thus, we grant counsel's motion to withdraw, and we affirm.

A true copy.

Attest:

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