

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-3976

United States of America,	*	
	*	
Appellee,	*	Appeal from the United States
	*	District Court for the
v.	*	District of Minnesota.
	*	
Jose Guadalupe Bautista-Villanueva,	*	[UNPUBLISHED]
	*	
Appellant.	*	

Submitted: June 12, 2003
Filed: June 23, 2003

Before BOWMAN, BYE, and RILEY, Circuit Judges.

PER CURIAM.

Jose Guadalupe Bautista-Villanueva pleaded guilty to possessing with intent to distribute more than 500 grams of cocaine, in violation of 21 U.S.C. § 841(a)(1). The district court¹ sentenced him to 70 months imprisonment and 4 years supervised release. Counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that Bautista-Villanueva's sentence far exceeds what is reasonable for someone who possessed illegal substances in order to support his family.

¹The Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota.

To the extent that Bautista-Villanueva is arguing his sentence is disproportionate to his crime, this argument fails. See Ewing v. California, 123 S. Ct. 1179, 1186-87 (2003) (Eighth Amendment does not require strict proportionality between crime and sentence). A more general challenge to the harshness of his sentence is likewise unavailing, because his 70-month sentence is within--and, in fact, is at the bottom of--a Guidelines range to which he stipulated in his plea agreement. See United States v. Nguyen, 46 F.3d 781, 783 (8th Cir. 1995) (defendant who explicitly and voluntarily exposes himself to specific sentence may not challenge that punishment on appeal); cf. United States v. Woodrum, 959 F.2d 100, 101 (8th Cir. 1992) (per curiam) (sentence is not reviewable merely because it is at top of properly calculated sentencing range).

Having conducted an independent review under Penson 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.