

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-1774

United States of America,

Appellee,

v.

Erasmó Martínez-Herrera,

Appellant.

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Appeal from the United States
District Court for the
Northern District of Iowa.

[UNPUBLISHED]

Submitted: September 15, 2003

Filed: September 17, 2003

Before BYE, BOWMAN, and MELLOY, Circuit Judges.

PER CURIAM.

Erasmó Martínez-Herrera pleaded guilty to illegal reentry after deportation, in violation of 8 U.S.C. § 1326(a), and the district court¹ sentenced him to 41 months imprisonment and 2 years supervised release. On appeal, counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the district court abused its discretion in sentencing Martínez-Herrera at the top of the applicable Guidelines range.

¹The Honorable Mark W. Bennett, Chief Judge, United States District Court for the Northern District of Iowa.

We reject counsel's argument because we do not review the district court's exercise of discretion in setting a sentence at the top of a properly determined Guidelines range. See United States v. Smotherman, 326 F.3d 988, 989 (8th Cir. 2003) (per curiam); United States v. Woodrum, 959 F.2d 100, 101 (8th Cir. 1992) (per curiam).

We have reviewed the record independently under Penson v. Ohio, 488 U.S. 75, 80 (1988), and we find no nonfrivolous issues. Accordingly, we grant counsel's motion to withdraw, and we affirm.

A true copy.

Attest:

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