

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-4118

United States of America,

Appellee,

v.

Alfredo Garcia, also known as
Alfredo Garcia Hill,

Appellant.

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[UNPUBLISHED]

Submitted: December 23, 2005
Filed: December 28, 2005

Before MELLOY, HANSEN, and GRUENDER, Circuit Judges.

PER CURIAM.

A jury found Alfredo Garcia guilty of conspiring to distribute and possess with intent to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. § 846, and the district court¹ sentenced him to 276 months in prison and 5 years of supervised release. On appeal, Garcia's counsel has moved to withdraw and filed a

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

brief under Anders v. California, 386 U.S. 738 (1967). For the reasons discussed below, we grant counsel's motion and affirm.

We reject counsel's argument that the district court abused its discretion by granting the government's motion in limine in part and prohibiting any party from referring to the government's decision not to call a particular witness unless the party showed the relevance of the reference. See Fed. R. Evid. 402 (only relevant evidence is admissible); United States v. Gianakos, 415 F.3d 912, 919 (8th Cir. 2005) (standard of review), cert. denied, 74 U.S.L.W. 3323 (U.S. Nov. 28, 2005) (No. 05-7081).

Having found no nonfrivolous issues for appeal after reviewing the record independently under Penson v. Ohio, 488 U.S. 75 (1988), we affirm the judgment of the district court and grant counsel's motion to withdraw.
