

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 04-3595

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United States of America,

Appellee,

v.

Eunicio Torres-Hernandez,

Appellant.

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Appeal from the United States

District Court for the

District of Nebraska.

[UNPUBLISHED]

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Submitted: January 26, 2006

Filed: February 24, 2006

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Before MURPHY, HANSEN, and COLLOTON, Circuit Judges.

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PER CURIAM.

Eunicio Torres-Hernandez pleaded guilty to conspiring to distribute and possess with intent to distribute 500 grams or more of methamphetamine mixture, in violation of 21 U.S.C. § 846. The parties had agreed pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) that Torres-Hernandez was responsible for at least 5 kilograms but less than 15 kilograms of methamphetamine. Finding him responsible for 9.52 kilograms, the district court<sup>1</sup> sentenced Torres-Hernandez to 108 months in prison and 5 years of supervised release. On appeal, his counsel has moved

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<sup>1</sup>The Honorable Laurie Smith Camp, United States District Judge for the District of Nebraska.

to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the government failed to establish that Torres-Hernandez distributed 9.52 kilograms of methamphetamine during the period of the conspiracy alleged in the indictment.

We hold that Torres-Hernandez cannot challenge a drug-quantity finding that falls within the range to which he stipulated under Rule 11(c)(1)(C) 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). Further, having reviewed the record independently under Penson v. Ohio, 488 U.S. 75, 80 (1988), we have found no other nonfrivolous issue. Accordingly, we grant counsel's motion to withdraw, and we affirm.

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