

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-3195

United States of America,

Appellee,

v.

Thomas Stoltenberg,

Appellant.

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

[UNPUBLISHED]

Submitted: December 26, 2006

Filed: January 22, 2007

Before RILEY, COLLOTON, and GRUENDER, Circuit Judges.

PER CURIAM.

Thomas Stoltenberg pleaded guilty to possessing with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). On appeal, counsel moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), asking us to review the reasonableness of the sentence the district court¹ imposed. We denied counsel's withdrawal motion and ordered supplemental briefing as to whether the government breached the parties' plea agreement by not filing at sentencing a motion under U.S.S.G. § 3E1.1(b), whether any such breach is subject

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

to review for plain error or otherwise, and, if so, whether relief is warranted under the applicable standard of review.

Upon reviewing the parties' supplemental briefs, we agree with the government that under our governing precedent, Stoltenberg waived his right to raise an argument based on the government's failure to move for a third level acceptance-of-responsibility reduction. See United States v. Cohen, 60 F.3d 460, 462 (8th Cir. 1995) (defendant's failure to allege breach of agreement at sentencing, restate terms of agreement in open court, or move to withdraw plea based on breach constituted waiver of issue); United States v. Archambault, 344 F.3d 732, 737 (8th Cir. 2003). We also conclude that Stoltenberg's sentence within the unobjected-to Guidelines range was not unreasonable.

Accordingly, we affirm.
