

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

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No. 05-1569

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United States of America,

Appellee,

v.

Bobby Joe Simms,

Appellant.

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Appeal from the United States  
District Court for the  
Western District of Missouri.

[UNPUBLISHED]

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Submitted: April 2, 2007  
Filed: April 11, 2007

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Before RILEY, HANSEN, and MELLOY, Circuit Judges.

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PER CURIAM.

Bobby Joe Simms (Simms) appeals the district court's<sup>1</sup> sentence of 57 months' imprisonment for being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The court ordered Simms's sentence to run concurrently with a state sentence for drug-trafficking convictions. On appeal, Simms's counsel moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967). Counsel in his Anders brief and Simms in a pro se supplemental brief argue the district court violated the Fifth and Sixth Amendments by using judge-found facts at

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<sup>1</sup>The Honorable Nanette K. Laughrey, United States District Judge for the Western District of Missouri.

sentencing, which were neither admitted by Simms nor proven to a jury beyond a reasonable doubt, to support the enhancements to Simms's base offense level.

We hold there was no Booker error because the district court did not treat the Guidelines as mandatory. See United States v. Booker, 543 U.S. 220, 311-14 (2005); United States v. Hines, 472 F.3d 1038, 1040 (8th Cir. 2007) (per curiam) (concluding after Booker judges can make factual findings as long as the United States Sentencing Guidelines are treated as advisory).

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

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