

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-1654

United States of America,

Appellee,

v.

Timothy A. Kateusz,

Appellant.

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

[UNPUBLISHED]

Submitted: May 31, 2007

Filed: June 7, 2007

Before COLLOTON, BEAM, and BENTON, Circuit Judges.

PER CURIAM.

A jury found Timothy A. Kateusz guilty of conspiring to manufacture 5 grams or more of actual methamphetamine and attempting to manufacture 5 grams or more of actual methamphetamine. The district court¹ imposed two concurrent sentences of 120 months in prison and 8 years of supervised release, the statutory minimum. On appeal, his counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967), and Kateusz has filed a pro se supplemental brief. For the reasons discussed below, we affirm the judgment of the district court.

¹The Honorable Howard F. Sachs, United States District Judge for the Western District of Missouri.

First, we conclude that the district court² did not err by crediting three police officers' testimony over Kateusz's testimony at the suppression hearing. See Anderson v. City of Bessemer City, 470 U.S. 564, 575 (1985). Second, we conclude that the court did not err by imposing two \$100 special assessments because Kateusz is serving two sentences, the imposition of which does not violate double jeopardy. See United States v. Boykins, 966 F.2d 1240, 1244-45 (8th Cir. 1992). Third, we conclude that the court did not err by applying the enhanced statutory minimum of 21 U.S.C. § 841(b)(1)(B)(viii) because it applies to the instant manufacturing offenses, see 21 U.S.C. § 841(a)(1), and Kateusz's prior felony conviction for possessing a controlled substance is a "prior conviction for a felony drug offense," see 21 U.S.C. § 841(b)(1)(B); United States v. Maynie, 257 F.3d 908, 919 n.5 (8th Cir. 2001). Fourth, we conclude that there was sufficient evidence to show that Kateusz could manufacture at least 5 grams of actual methamphetamine. See United States v. Anderson, 236 F.3d 427, 430 (8th Cir. 2001).

Finally, after reviewing the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), we conclude that there are no non-frivolous issues for appeal. Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw.

²The Honorable Nanette K. Laughrey, United States District Judge for the Western District of Missouri, adopting the report and recommendation of the Honorable Robert E. Larsen, United States Magistrate Judge for the Western District of Missouri.