

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-3693

United States of America,

Appellee,

v.

Johnny L. Cornelious,

Appellant.

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

[UNPUBLISHED]

Submitted: November 6, 2007
Filed: November 13, 2007

Before BYE, RILEY, and MELLOY, Circuit Judges.

PER CURIAM.

After Johnny L. Cornelious (Cornelious) pled guilty to distributing more than 5 grams of cocaine base, in violation of 21 U.S.C. § 841(a)(1), the district court¹ sentenced Cornelious to 87 months in prison and 5 years of supervised release. On appeal, Cornelious's counsel filed a brief under Anders v. California, 386 U.S. 738 (1967), and moved to withdraw. Cornelious filed a pro se supplemental brief. For the reasons discussed below, we reject all of the arguments raised on appeal, and we grant counsel's withdrawal motion.

¹The Honorable Harry F. Barnes, United States District Judge for the Western District of Arkansas.

First, the sentencing transcript shows Cornelious was held responsible for only 5-20 grams of cocaine base, consistent with the amounts in the indictment and plea agreement. Second, Cornelious's claim he was never provided with a copy of the presentence report is not supported by the record. Third, a direct criminal appeal is not a vehicle to remedy an alleged information leak by the government that has caused a defendant past hardship in prison. Fourth, matters to which defense counsel made and withdrew objections below--the application of an aggravating-role enhancement and the calculation of the criminal history score--are deemed intentionally relinquished or abandoned and need not be reviewed on appeal. See United States v. Olano, 507 U.S. 725, 733 (1993); United States v. Tulk, 171 F.3d 596, 600 (8th Cir. 1999). Fifth, Cornelious's claim of ineffective assistance of counsel must be raised, if at all, in a 28 U.S.C. § 2255 motion. See United States v. Ramirez-Hernandez, 449 F.3d 824, 827 (8th Cir. 2006).

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