

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-3033

United States of America,

Appellee,

v.

Raul Madraso,

Appellant.

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

[UNPUBLISHED]

Submitted: December 17, 2007

Filed: December 21, 2007

Before WOLLMAN, COLLOTON, and BENTON, Circuit Judges.

PER CURIAM.

Raul Madraso pleaded guilty to possessing more than 50 grams of crack with intent to distribute; his 1995 felony drug conviction increased his mandatory minimum prison term to 20 years. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 851. The district court¹ sentenced Madraso to 240 months in prison and 10 years of supervised release. On appeal, his counsel has moved to withdraw and filed a brief under *Anders v. California*, 386 U.S. 738 (1967). For the following reasons, we affirm.

¹The Honorable Fernando J. Gaitan, Jr., Chief Judge, United States District Court for the Western District of Missouri.

First, Madraso's sentence is not unreasonable: 240 months was the statutory minimum, and the district court had no authority to depart or vary downward because the government did not move for a lower sentence based on substantial assistance and Madraso did not qualify for safety-valve relief. *See* 18 U.S.C. § 3553(e), (f); *United States v. Gregg*, 451 F.3d 930, 937 (8th Cir. 2006); *United States v. Chacon*, 330 F.3d 1065, 1066 (8th Cir. 2003). Second, Madraso's prior felony conviction was properly used to enhance his sentence. *See United States v. Thomas*, 930 F.2d 12, 14 (8th Cir. 1991) (no Double Jeopardy Clause violation). Third, it was within the government's discretion to file the sentence-enhancing section 851 information, absent any allegation that the decision was based on an improper factor. *See United States v. LaBonte*, 520 U.S. 751, 761-62 (1997). Finally, after reviewing the record independently under *Penson v. Ohio*, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues.

Accordingly, we grant counsel leave to withdraw, and we affirm the judgment.
