

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

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No. 10-1623

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United States of America,

Appellee,

v.

Nilo Noriega-Millan,

Appellant.

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

[UNPUBLISHED]

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Submitted: August 16, 2010

Filed: August 19, 2010

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Before WOLLMAN, LOKEN, and MELLOY, Circuit Judges.

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PER CURIAM.

Nilo Noriega-Millan pleaded guilty to unlawful reentry, in violation of 8 U.S.C. § 1326(a) and (b)(2). The district court<sup>1</sup> sentenced him to 77 months in prison and 2 years of supervised release. On appeal, his counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967), challenging the reasonableness of the sentence and the court's consideration of the 18 U.S.C. § 3553(a) factors. Noriega-Millan has filed a pro se supplemental brief, arguing that

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<sup>1</sup>The Honorable Henry E. Autrey, United States District Judge for the Eastern District of Missouri.

his counsel was ineffective and that the court did not adequately consider mitigating circumstances.

We conclude that the district court committed no procedural error and imposed a substantively reasonable sentence. See Gall v. United States, 552 U.S. 38, 51 (2007) (in reviewing sentence, appellate court first ensures that district court committed no significant procedural error, then considers substantive reasonableness of sentence under abuse-of-discretion standard; if sentence is within applicable Guidelines range, appellate court may apply presumption of reasonableness); United States v. Haack, 403 F.3d 997, 1004 (8th Cir. 2005) (describing abuse of discretion). We decline to consider the ineffective-assistance claim on direct appeal. See United States v. Cain, 134 F.3d 1345, 1352 (8th Cir. 1998).

Having reviewed the record under Penon v. Ohio, 488 U.S. 75 (1988), we have found no nonfrivolous issues. Accordingly, we grant counsel's motion to withdraw, and we affirm.

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