

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

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No. 10-3392

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United States of America,

Appellee,

v.

Robert Eberhart, also known as Roger  
Eberhart,

Appellant.

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

[UNPUBLISHED]

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Submitted: July 1, 2011  
Filed: July 8, 2011

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Before LOKEN, MURPHY, and COLLOTON, Circuit Judges.

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PER CURIAM.

Robert Eberhart pleaded guilty to three counts of distributing more than five grams of cocaine base in violation of 18 U.S.C. § 841(a)(1). The district court<sup>1</sup> imposed concurrent sentences of 57 months in prison and three years of supervised release. Eberhart appeals. His counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the district court abused its

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

discretion in not imposing a more lenient sentence. Eberhart moves for appointment of new counsel.

Eberhart has not rebutted the presumption that his sentence at the bottom of the advisory guidelines range is not substantively unreasonable. See United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc); United States v. Valadez, 573 F.3d 553, 556 (8th Cir. 2009) (per curiam). Additionally, having reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), we find no non-frivolous issues. Accordingly, the judgment of the district court affirmed. We deny Eberhart's motion for new counsel and grant counsel's motion to withdraw, conditioned on counsel informing Eberhart about the procedures for seeking rehearing from this court and filing a petition for a writ of certiorari from the Supreme Court of the United States.

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