

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 10-3839

United States of America,

Appellee,

v.

Javier Garcia Alvarez,

Appellant.

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Appeal from the United States
District Court for the
Southern District of Iowa.

[UNPUBLISHED]

Submitted: August 18, 2011

Filed: August 31, 2011

Before WOLLMAN, SMITH, and GRUENDER, Circuit Judges.

PER CURIAM.

Javier Garcia Alvarez was charged with transporting illegal aliens within the United States, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii). The charge arose after a van carrying illegal aliens was involved in a crash with another vehicle in Marshall County, Iowa. Garcia Alvarez moved to suppress his post-accident statements to law enforcement officers at the emergency room, because he was not first advised of his rights under Miranda v. Arizona, 384 U.S. 436 (1966). The district court¹ denied the motion and the matter proceeded to trial. A jury found Garcia Alvarez guilty of the

¹The Honorable John A. Jarvey, United States District Judge for the Southern District of Iowa.

charge, and the court sentenced him to 40 months in prison, varying upward from the advisory Guidelines range of 27-33 months. On appeal, his counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the court erred in denying the suppression motion and that the sentence is unreasonable.

We find no error in the denial of the motion to suppress because we agree with the district court that the evidence at the suppression hearing showed that Garcia Alvarez was not in custody when he made the statements. See United States v. Muhlenbruch, 634 F.3d 987, 995-96 (8th Cir. 2011), petition for cert. filed, No. 10-11208 (U.S. June 22, 2011); United States v. New, 491 F.3d 369, 373-74 (8th Cir. 2007). As to the sentence, we conclude that it is not unreasonable: the court correctly calculated the advisory Guidelines range, properly considered the 18 U.S.C. § 3553(a) sentencing factors and all relevant information about Garcia Alvarez, and sufficiently explained the reasons for the sentence. See United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc); United States v. Watson, 480 F.3d 1175, 1177 (8th Cir. 2007); United States v. Garnette, 474 F.3d 1057, 1060 (8th Cir. 2007).

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