

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 11-2712

United States of America,

Appellee,

v.

David Franco-Tinajero,

Appellant.

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* Appeal from the United States
* District Court for the
* Eastern District of Arkansas.
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* [UNPUBLISHED]
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Submitted: December 22, 2011

Filed: December 29, 2011

Before WOLLMAN, SMITH, and GRUENDER, Circuit Judges.

PER CURIAM.

David Franco-Tinajero pleaded guilty to conspiracy to possess with intent to distribute at least 500 grams of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A). The district court¹ sentenced him to 120 months in prison and 5 years of supervised release. On appeal, Franco-Tinajero's counsel moves to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the sentence is substantively unreasonable.

¹The Honorable J. Leon Holmes, Chief Judge, United States District Court for the Eastern District of Arkansas.

Based on his plea-agreement stipulations, Franco-Tinajero received the statutory mandatory minimum sentence applicable to his offense. Accordingly, we reject his argument that the sentence is substantively unreasonable. See United States v. Gregg, 451 F.3d 930, 937 (8th Cir. 2006) (United States v. Booker, 543 U.S. 220 (2005), does not relate to statutorily imposed sentences); United States v. Chacon, 330 F.3d 1065, 1066 (8th Cir. 2003) (only authority for court to depart from statutory minimum sentence is in 18 U.S.C. § 3553(e) and (f), which apply only when government moves for downward departure based on substantial assistance or defendant qualifies for safety-valve relief). Further, having reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues for appeal.

Accordingly, we grant counsel's motion to withdraw, and we affirm.
