

United States Court of Appeals
For the Eighth Circuit

No. 12-3885

United States of America

Plaintiff - Appellee

v.

Timothy G. Seales

Defendant - Appellant

Appeal from United States District Court
for the District of South Dakota - Rapid City

Submitted: May 7, 2013

Filed: May 9, 2013

[Unpublished]

Before LOKEN, MELLOY, and BENTON, Circuit Judges.

PER CURIAM.

Timothy Seales pleaded guilty to failing to pay child support, in violation of 18 U.S.C. § 228(a)(3), and the district court¹ imposed a sentence of three years of

¹The Honorable Jeffrey L. Viken, Chief Judge, United States District Court for the District of South Dakota.

unsupervised probation. This appeal followed, in which counsel moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the court committed plain error at the change-of-plea hearing by failing to confirm whether Seales understood that any statement he made under oath could be used in a prosecution for perjury or false statement, as mandated by Federal Rule of Criminal Procedure 11(b)(1)(A). The notice of appeal was untimely, and this frivolous issue was not raised in the district court. By proceeding in this fashion, the Assistant Federal Public Defender obligated our court to review the record under Penson v. Ohio, 488 U.S. 75 (1988). Though a waste of our resources, we have done so and find no nonfrivolous issues. Accordingly, we affirm the judgment of the district court and decline to rule on counsel's motion to withdraw.
