

United States Court of Appeals
For the Eighth Circuit

No. 15-1454

United States of America

Plaintiff - Appellee

v.

Jose Luis Martinez

Defendant - Appellant

Appeal from United States District Court
for the Western District of Arkansas - Fayetteville

Submitted: July 21, 2015

Filed: July 31, 2015

[Unpublished]

Before SHEPHERD, BYE, and KELLY, Circuit Judges.

PER CURIAM.

Jose Martinez directly appeals after he pled guilty to a drug offense and the district court¹ sentenced him to a term of imprisonment within the Guidelines range

¹The Honorable Timothy L. Brooks, United States District Judge for the Western District of Arkansas.

that was calculated in part based on a U.S.S.G. § 5K1.1 downward departure. His counsel has moved to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), generally arguing that the district court abused its discretion in sentencing Martinez, and specifically suggesting that the court procedurally erred in calculating Martinez's criminal-history points.

Upon careful review, we conclude that the district court committed no procedural error, much less plain error in sentencing Martinez, and that no abuse of discretion occurred. See United States v. Feemster, 572 F.3d 455, 461-62, 464 (8th Cir. 2009) (en banc) (describing appellate review of sentencing decisions); see also United States v. Phelps, 536 F.3d 862, 865 (8th Cir. 2008) (if defendant fails to timely object to procedural sentencing error, error may only be reviewed for plain error); United States v. Berni, 439 F.3d 990, 993 (8th Cir. 2006) (per curiam) (addressing reasonableness of sentence involving § 5K1.1 downward departure).

Accordingly, we affirm. As for counsel's motion to withdraw, we conclude that allowing counsel to withdraw at this time would not be consistent with the Eighth Circuit's 1994 Amendment to Part V of the Plan to Implement the Criminal Justice Act of 1964. We therefore deny counsel's motion to withdraw as premature, without prejudice to counsel refiling the motion upon fulfilling the duties set forth in the Amendment.
