

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-1475

United States of America,

Appellee,

v.

Marquette Scott Waltermán,

Appellant.

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

Submitted: February 15, 2005

Filed: May 27, 2005

Before MELLOY, HEANEY, and FAGG, Circuit Judges.

HEANEY, Circuit Judge.

Marquette Scott Waltermán appeals the district court's imposition of a 168-month sentence for his drug conviction. We affirm.

On June 13, 2002, Waltermán pleaded guilty to one count of conspiracy to manufacture and distribute methamphetamine, in violation of 21 U.S.C. §§ 841(b)(1)(B) and 846. The district court sentenced Waltermán to 262 months of imprisonment after finding that Waltermán was a career offender as defined by United States Sentencing Guideline section 4B1.1. Waltermán appealed, arguing that 1) the district court erred in its application of the career offender enhancement, and

2) the district court was unaware that it could depart downward from Waltermán's guideline sentence. We agreed with Waltermán on his first claim, and "remand[ed] for resentencing without application of the career offender enhancement." United States v. Waltermán, 343 F.3d 938, 943 (8th Cir. 2003).

On remand, the parties agreed that there were no outstanding factual issues, and Waltermán presented no relevant objections to the revised presentence report. Consistent with our mandate, the district court did not apply the career offender enhancement. Waltermán sought and received a sentence of 168 months of imprisonment, the lowest sentence permitted under his guideline range. Nonetheless, Waltermán again appealed his sentence. First, his attorney filed an Anders¹ brief suggesting that the district court's drug quantity determination was plainly erroneous because it rested on unreliable testimony. Counsel then filed a second brief, arguing that Waltermán's sentence violated Blakely v. Washington, 124 S. Ct. 2531 (2004), because the district court enhanced his sentence based on conduct not admitted or proven to a jury. Waltermán did not advance such a claim before the district court during his first sentencing proceeding, in his first appeal, or in his second sentencing proceeding.

We decline to address Waltermán's new arguments in this subsequent appeal. Our prior remand was limited to permit resentencing without application of the erroneously-applied career offender enhancement. Where a remand is limited to the resolution of specific issues, those issues outside the scope of the remand are generally not available for consideration. United States v. Logan, 333 F.3d 876, 878 (8th Cir. 2003); United States v. Behler, 187 F.3d 772, 777 (8th Cir. 1999). Moreover, Waltermán never brought this court's attention to any issue related to the enhancements, which he now contends warrant reversal of a sentence imposed without objection. "A defendant does not receive a second chance to support an

¹Anders v. California, 386 U.S. 738 (1967).

argument he failed to support in a first appeal simply because he is resentenced.” United States v. Stuckey, 255 F.3d 528, 531 (8th Cir. 2001); see also United States v. Kress, 58 F.3d 370, 373 (8th Cir. 1995) (“Where a party could have raised an issue in a prior appeal but did not, a court later hearing the same case need not consider the matter.”). Having found no remaining issues of merit, we affirm the district court’s 168-month sentence.
