

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-2804

United States of America,

Appellee,

v.

Aaron T. Fant,

Appellant.

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Appeal from the United States
District Court for the
Western District of Missouri.

[UNPUBLISHED]

Submitted: June 21, 2005

Filed: July 21, 2005

Before SMITH, FAGG, and MAGILL, Circuit Judges.

PER CURIAM.

Aaron Fant appeals the 77-month prison sentence the district court¹ imposed after he pleaded guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). Fant's counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that Fant's sentence is excessive.

¹The Honorable Dean Whipple, Chief Judge, United States District Court for the Western District of Missouri.

Construing this argument as an Eighth Amendment challenge, we find that the sentence does not violate the Eighth Amendment. See United States v. Farmer, 73 F.3d 836, 840 (8th Cir.) (only in very narrow circumstances has punishment within statutory limits been held to violate Eighth Amendment; holding that life in prison without parole under “three-strikes” law does not violate Eighth Amendment).

Construing Fant's argument as a challenge to his sentence under United States v. Booker, 125 S. Ct. 738 (2005), we find that he has not demonstrated plain error because there is nothing in the record to suggest that he would have received a more favorable sentence under an advisory guideline system. See United States v. Pirani, 406 F.2d 543, 550, 552 (8th Cir. 2005) (en banc).

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