

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3006

United States of America,

Appellee,

v.

Byron Pargo,

Appellant.

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* Appeal from the United States

* District Court for the

* Eastern District of Missouri.

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* [UNPUBLISHED]

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Submitted: June 30, 2005

Filed: July 13, 2005

Before BYE, RILEY, and COLLOTON, Circuit Judges.

PER CURIAM.

Byron Pargo appeals the sentence imposed by the district court¹ after he pleaded guilty to falsely representing a Social Security number to be the number assigned to him, in violation of 42 U.S.C. § 408(a)(7)(B). His counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967). Pargo has filed a pro se supplemental brief.

¹ The Honorable Donald J. Stohr, United States District Judge for the Eastern District of Missouri.

We conclude that the arguments raised on appeal are without merit. First, the offense-level calculations for purposes of the United States Sentencing Guidelines were in accordance with the plea agreement. Second, the decision to include a term of community confinement rather than home detention as a condition of probation was within the district court's discretion. See U.S.S.G. § 5B1.1(a)(2). Third, the possibility that Pargo would have to pay some of the costs of his confinement was stated in both the plea agreement and the unobjected-to presentence report, although we note that the district court found he was unable to pay a fine or restitution. To the extent Pargo asserts that his attorney misadvised him, any related claim of ineffective assistance of counsel should be raised in a motion under 28 U.S.C. § 2255, where an appropriate record may be developed. See United States v. Hughes, 330 F.3d 1068, 1069 (8th Cir. 2003).

Having reviewed the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), including consideration of the impact of *United States v. Booker*, 125 S. Ct. 738 (2005), and *United States v. Pirani*, 406 F.3d 543 (8th Cir. 2005) (en banc), we find no nonfrivolous issues for appeal. Accordingly, we affirm, and we grant counsel's motion to withdraw.
