

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-4041

United States of America,

Appellee,

v.

Maria Del Rosario

Tepozotlan-Gonzales, also known
as Fatima Santana-Coronado, also
known as Georgia Andrade-Tapia,
also known Rosio Araceli Rico-
Colorado, also known as Rita Aguilar,
also known as Francisca Sanchez-
Garcia, also known as Virginia
Colorado-Rodriguez, also known as
Brenda Ruiz Pineda, also known as
Veronica Lizarrega,

Appellant.

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

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

[UNPUBLISHED]

Submitted: November 5, 2007

Filed: November 9, 2007

Before BYE, RILEY, and MELLOY, Circuit Judges.

PER CURIAM.

Maria Del Rosario Tepozotlan-Gonzales challenges the 42-month sentence the district court¹ imposed after she pleaded guilty to conspiring to transport stolen goods in interstate commerce, in violation of 18 U.S.C. §§ 2314, 371, and 2. Tepozotlan-Gonzales's counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the district court erred in imposing enhancements for the amount of loss, the number of victims, and being in the business of receiving stolen property. Tepozotlan-Gonzales argues in a pro se brief that the district court usurped the role of the jury in imposing the enhancements, and that counsel was ineffective for inducing her to plead guilty without fully informing her of the consequences and for failing to adequately object to the presentence report (PSR).

Reviewing the district court's application of the Guidelines de novo and its factual findings for clear error, see United States v. Rodriguez, 484 F.3d 1006, 1014 (8th Cir. 2007), cert. denied, 76 U.S.L.W. 3065 (U.S. Oct. 1, 2007) (No. 07-161), we find that the enhancements imposed by the district court were appropriate: Tepozotlan-Gonzales's plea-hearing admissions and the uncontested facts in the PSR support the district court's finding that her co-conspirators' actions were reasonably foreseeable to Tepozotlan-Gonzales and warranted the enhancements, see United States v. Pierce, 479 F.3d 546, 549 (8th Cir. 2007) (defendant in criminal conspiracy is responsible for offenses committed by fellow conspirators if defendant was member of conspiracy when offense was committed, and if offense was committed in furtherance of and as foreseeable consequence of conspiracy), and also support the finding that she was in the business of receiving stolen property, see U.S.S.G. § 2B1.1 comment. (n.5) (setting out non-exhaustive list of factors to consider).

¹The Honorable Ronald E. Longstaff, United States District Judge for the Southern District of Iowa.

We also reject Tepozotlan-Gonzales's argument that the sentencing enhancements had to be proven to a jury beyond a reasonable doubt, as the district court treated the Guidelines as advisory (and in fact deviated below the Guidelines range). See United States v. Booker, 543 U.S. 220, 233-37, 245, 258-59 (2005) (Sixth Amendment problem resulting from mandatory nature of Guidelines is remedied by making Guidelines advisory); United States v. Salter, 418 F.3d 860, 862 (8th Cir. 2005) (after Booker, district court may enhance sentence based on judge-found facts if court views Guidelines as advisory). Finally, Tepozotlan must pursue any ineffective-assistance claims in a proceeding under 28 U.S.C. § 2255. See United States v. Hughes, 330 F.3d 1068, 1069 (8th Cir. 2003).

Having reviewed the record independently under Penon v. Ohio, 488 U.S. 75, 80 (1988), we have found no nonfrivolous issues for appeal. Accordingly, we affirm, we grant counsel's motion to withdraw, and we deny Tepozotlan-Gonzales's motion for appointment of counsel.
