

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 09-3446

United States of America,

Appellee,

v.

Timothy J. Lange,

Appellant.

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* Appeal from the United States
* District Court for the Northern
* District of Iowa.
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* [UNPUBLISHED]
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Submitted: April 29, 2010

Filed: May 4, 2010

Before MELLOY, BOWMAN, and SMITH, Circuit Judges.

PER CURIAM.

In this direct criminal appeal, Timothy J. Lange challenges the 51-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) and 924(a)(2). His counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the court erred in departing upward by three criminal history categories under U.S.S.G. § 4A1.3(a) (understatement of criminal history), and

¹The Honorable Linda R. Reade, Chief Judge, United States District Court for the Northern District of Iowa.

that the sentence is substantively unreasonable. In his pro se supplemental brief, Lange argues that the court erred in departing upward under section 4A1.3. For the following reasons, we affirm.

The district court did not abuse its discretion in departing upward. The court adequately explained its decision and considered appropriate factors in concluding that Lange was a recidivist whose criminal history category did not accurately reflect his recidivism and who had received relatively lenient sentences throughout his extensive criminal history. See United States v. Gonzalez, 573 F.3d 600, 605-07 (8th Cir. 2009) (no abuse of discretion in departing upward under § 4A1.3(a) where court considered appropriate factors and adequately explained decision). We also conclude that the court did not abuse its discretion by imposing an unreasonable sentence: the court noted that it had considered the 18 U.S.C. § 3553(a) factors, specifically discussed several of the factors, and entertained defense arguments for a lower sentence. We find no indication in the record that the court overlooked a relevant factor, gave significant weight to an improper or irrelevant factor, or misapplied the factors. See United States v. Haack, 403 F.3d 997, 1004 (8th Cir. 2005).

Finally, having reviewed the record independently under Penon v. Ohio, 488 U.S. 75 (1988), we have found no nonfrivolous issues. Accordingly, we grant counsel's motion to withdraw, and we affirm the district court's judgment.