

United States Court of Appeals
For the Eighth Circuit

No. 17-2092

United States of America

Plaintiff - Appellee

v.

Orlando Damian Ponce

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Arkansas - Little Rock

Submitted: November 7, 2017

Filed: November 13, 2017

[Unpublished]

Before LOKEN, MURPHY, and SHEPHERD, Circuit Judges.

PER CURIAM.

Orlando Damian Ponce directly appeals after he pleaded guilty to illegal reentry and the district court¹ sentenced him to a prison term at the bottom of the

¹The Honorable Kristine G. Baker, United States District Judge for the Eastern District of Arkansas.

calculated Guidelines range. His counsel has moved for leave to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the district court miscalculated the Guidelines range. Ponce has filed a pro se brief arguing that the court miscalculated the Guidelines range by failing to use the 2016 Guidelines manual, and that defense counsel failed to communicate effectively with him about the case.

To begin, to the extent Ponce raised an ineffective-assistance claim, we decline to consider it on direct appeal. See United States v. Ramirez-Hernandez, 449 F.3d 824, 826-27 (8th Cir. 2006) (ineffective-assistance claims are usually best litigated in collateral proceedings, where record can be properly developed). Further, we find no error in the district court's calculation of the Guidelines range. See United States v. Turner, 781 F.3d 374, 393 (8th Cir. 2015) (this court reviews district court's application of Guidelines de novo, and its findings of fact for clear error); United States v. Menteer, 408 F.3d 445, 446 (8th Cir. 2005) (per curiam) (unobjected-to facts in presentence report are deemed admitted). We also reject Ponce's Guidelines-manual argument because the district court used the 2016 Guidelines manual.

In addition, we have independently reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), and have found no nonfrivolous issues for appeal. Accordingly, we grant counsel's motion to withdraw, and affirm the judgment.