

United States Court of Appeals
For the Eighth Circuit

No. 19-1158

United States of America

Plaintiff - Appellee

v.

Calvin Bernhardt

Defendant - Appellant

Appeal from United States District Court
for the District of North Dakota - Bismarck

Submitted: September 3, 2019

Filed: September 6, 2019

[Unpublished]

Before LOKEN, GRUENDER, and KOBES, Circuit Judges.

PER CURIAM.

After this court vacated one conviction and remanded for resentencing, United States v. Bernhardt, 903 F.3d 818 (8th Cir. 2018), the district court¹ sentenced Calvin

¹The Honorable Daniel L. Hovland, Chief Judge, United States District Court for the District of North Dakota.

Bernhardt to 480 months in prison. Bernhardt appeals, and his counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), in which he seeks permission to withdraw and identifies as a possible issue the district court's failure to confirm at the resentencing hearing that counsel and Bernhardt had discussed the revised presentence report. In a pro se supplemental brief, Bernhardt argues that the district court's omission violated Federal Rule of Criminal Procedure 32(i)(1)(A).

After carefully reviewing the Rule 32 argument for plain error, we find none. See United States v. Callaway, 762 F.3d 754, 759 (8th Cir. 2014) (procedural errors not objected to at sentencing are reviewed for plain error; to establish plain error, defendant must show error that is plain and affects substantial rights). In addition, having independently reviewed the resentencing record under Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues for appeal. Accordingly, we grant counsel leave to withdraw, and we affirm.
