

United States Court of Appeals
For the Eighth Circuit

No. 22-1002

United States of America

Plaintiff - Appellee

v.

Samuel Eli Abikzer

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Eastern

Submitted: July 5, 2022

Filed: July 12, 2022

[Unpublished]

Before ERICKSON, GRASZ, and KOBES, Circuit Judges.

PER CURIAM.

Samuel Abikzer appeals the sentence imposed by the district court¹ after he pleaded guilty to a drug offense. His counsel has moved for leave to withdraw, and

¹The Honorable John A. Jarvey, then Chief Judge, United States District Court for the Southern District of Iowa, now retired.

has filed a brief under Anders v. California, 386 U.S. 738 (1967), challenging his sentence.

Upon careful review, we conclude that the district court did not plainly err in admitting testimony about statements Abikzer made in a proffer interview, as the amount of methamphetamine in dispute did not affect the Guidelines calculation. See United States v. Moore, 565 F.3d 435, 437 (8th Cir. 2009) (unobjected-to procedural sentencing error is reviewed under plain error standard; defendant must show an error that is plain and affects substantial rights).

We also conclude that the district court did not impose a substantively unreasonable sentence, as the court properly considered the factors listed in 18 U.S.C. § 3553(a) and did not err in weighing the relevant factors. See United States v. Feemster, 572 F.3d 455, 461-62 (8th Cir. 2009) (reviewing sentences for substantive reasonableness under deferential abuse of discretion standard; abuse of discretion occurs when the court fails to consider relevant factor, gives significant weight to an improper or irrelevant factor, or commits a clear error of judgment in weighing the appropriate factors). Further, the court imposed a sentence below the Guidelines range. See United States v. McCauley, 715 F.3d 1119, 1127 (8th Cir. 2013) (noting that when the district court has varied below the Guidelines range, it is “nearly inconceivable” that the court abused its discretion in not varying further).

We have also independently reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), and we find no non-frivolous issues for appeal. Accordingly, we affirm the judgment, and we grant counsel’s motion to withdraw.