

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 99-2337

United States of America,

Appellee,

v.

Michael Ed Brewer,

Appellant.

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Appeal from the United States
District Court for the
Western District of Arkansas.

[UNPUBLISHED]

Submitted: June 1, 2000

Filed: June 5, 2000

Before WOLLMAN, Chief Judge, BOWMAN, and MORRIS SHEPPARD ARNOLD,
Circuit Judges.

PER CURIAM.

Pursuant to a written plea agreement, Michael Ed Brewer pleaded guilty to one count of distributing methamphetamine, in violation of 21 U.S.C. § 841(a)(1) (1994), and to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) (1994). The District Court¹ sentenced him to 121 months imprisonment and 3 years supervised release. We affirmed Brewer's sentence on appeal. See United States v. Brewer, 141 F.3d 1170 (8th Cir. 1998) (unpublished per curiam). The

¹The Honorable Jimm Larry Hendren, Chief Judge, United States District Court for the Western District of Arkansas.

government later filed a motion to reduce Brewer's sentence pursuant to Federal Rule of Criminal Procedure 35(b). The District Court granted the government's motion, and resented Brewer to 78 months imprisonment and three years supervised release.

On appeal, counsel moved to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967), and although we granted Brewer permission to file a pro se supplemental brief, he has not done so. We conclude counsel's Anders-brief arguments that Brewer's original sentence violated the plea agreement, and was too harsh in light of the disparity between it and a co-defendant's sentence, are unavailing. Brewer is not entitled in this appeal to raise issues he could have raised in a direct criminal appeal following his conviction and original sentencing. See Goff v. United States, 965 F.2d 604, 605 (8th Cir. 1992) (per curiam); cf. United States v. Kress, 58 F.3d 370, 373 (8th Cir. 1995) (where party could have raised issue in prior appeal but did not, court later hearing same case need not consider matter).

Upon review of the record in accordance with Penson v. Ohio, 488 U.S. 75, 80 (1988), we have found no other nonfrivolous issues. Accordingly, we grant counsel's motion to withdraw and affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.