

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 99-4335

United States of America,

Appellee,

v.

Jose Antonio Elias, Jr.,

Appellant.

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

[UNPUBLISHED]

Submitted: July 5, 2000

Filed: July 12, 2000

Before McMILLIAN, BRIGHT, and FAGG, Circuit Judges.

PER CURIAM.

Jose Antonio Elias, Jr. appeals the district court's decision to sentence Elias to 57 months imprisonment and three years supervised release after he pleaded guilty to an illegal re-entry offense, in violation of 8 U.S.C. § 1326. On appeal, counsel filed a brief under Anders v. California, 386 U.S. 738 (1967), suggesting the sentence is unduly harsh. We affirm.

Initially, we reject counsel's contention that sentencing Elias at the bottom of a Guidelines range to which Elias did not object was cruel and unusual punishment. See

United States v. Foote, 920 F.2d 1395, 1401 (8th Cir. 1990) (sentences imposed under the Guidelines do not violate Eighth Amendment), cert. denied, 500 U.S. 946 (1991). Otherwise, counsel does not raise any other valid basis for review. See 18 U.S.C. § 3742(a)(1)-(4) (limiting appeals to sentences imposed in violation of law, sentences imposed due to incorrect application of Guidelines, sentences above applicable Guidelines range, and unreasonable sentences imposed for offenses for which there were no Guidelines).

Having reviewed the record for any nonfrivolous issues and having found none, see Penson v. Ohio, 488 U.S. 75, 80 (1988), we affirm Elias's sentence, grant counsel's motion to withdraw, and deny Elias's motion for appointment of new counsel.

A true copy.

Attest:

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