

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 00-2338NE

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United States of America,

Appellee,

v.

Anthony Hardy, also known as Black,  
also known as Kareem Hardin,

Appellant.

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\* On Appeal from the United  
\* States District Court  
\* for the District of  
\* Nebraska.  
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\* [Not To Be Published]  
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Submitted: May 7, 2001

Filed: May 22, 2001

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Before HANSEN, RICHARD S. ARNOLD, and BYE, Circuit Judges.

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PER CURIAM.

Anthony Hardy pleaded guilty to conspiring to distribute a mixture or substance containing a detectable amount of cocaine base, in violation of 18 U.S.C. § 2 and 21 U.S.C. § 846. The District Court<sup>1</sup> sentenced him to fifteen years and eight months (188 months) imprisonment, and five years supervised release. On appeal, Hardy's counsel filed a brief under Anders v. California, 386 U.S. 738 (1967), contending that the Court

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<sup>1</sup>The Honorable Lyle E. Strom, United States District Judge for the District of Nebraska.

incorrectly calculated the appropriate Guidelines range and thus imposed an “excessive sentence.” In a pro se supplemental brief, Hardy contends that he was sentenced in violation of Apprendi v. New Jersey, 530 U.S. 466 (2000), because the indictment omitted drug quantity.

At sentencing, the District Court properly resolved Hardy’s objections to the applicable Guidelines range. Further, Hardy was not sentenced within that range because he received a downward departure, the extent of which is unreviewable. See United States v. Dutcher, 8 F.3d 11, 12 (8th Cir. 1993).

As to the pro se issue, because Hardy’s sentence does not exceed the twenty-year statutory maximum prison term for a non-quantity-based drug offense, it does not violate Apprendi. See United States v. Aguayo-Delgado, 220 F.3d 926, 934 (8th Cir.), cert. denied, 121 S. Ct. 600 (2000).

Having reviewed the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), we have found no nonfrivolous issues for appeal. Accordingly, we affirm the judgment of the District Court and grant counsel’s motion to withdraw.

A true copy.

Attest:

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