

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-3122

United States of America,

Appellee,

v.

Hyman Leville Steele,
also known as Hymie Steele,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: May 10, 2001
Filed: May 15, 2001

Before LOKEN, FAGG, and BYE, Circuit Judges.

PER CURIAM.

Hyman Leville Steele pleaded guilty to conspiring to distribute and possess with intent to distribute a mixture or substance containing a detectable amount of cocaine base, in violation of 21 U.S.C. § 846. The district court,¹ using an unobjected-to drug quantity of at least 9.52 grams, sentenced Steele to 60 months imprisonment, the statutory minimum, see 21 U.S.C. § 841(b)(1)(B), and to 5 years supervised release. On appeal, Steele's counsel filed a brief under Anders v. California, 386 U.S. 738

¹The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

(1967), arguing that Steele should have been held responsible for only 3-4 grams of cocaine base, and that his sentence violated Apprendi v. New Jersey, 530 U.S. 466 (2000).

Steele's arguments are unpersuasive. Because his sentence does not exceed the 20-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). Further, in his plea agreement, Steele stipulated that he was responsible for 5-20 grams of cocaine base. See United States v. Nguyen, 46 F.3d 781, 783 (8th Cir. 1995).

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 and grant counsel's motion to withdraw.

A true copy.

Attest:

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