

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-1296

United States of America,

Appellee,

v.

Agapito Napoles-Garcia, also known as
Agapito Napoles-Jiminez,

Appellant.

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

[UNPUBLISHED]

Submitted: June 7, 2001
Filed: June 12, 2001

Before HANSEN, BEAM, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Agapito Napoles-Garcia pleaded guilty to illegally re-entering the United States, in violation of 8 U.S.C. § 1326(a). His sentence was enhanced under 8 U.S.C. § 1326(b) because he had previously been deported after conviction for an aggravated felony. The district court¹ sentenced him to 57 months of imprisonment and 2 years of supervised release. On appeal, counsel has filed a brief and moved to withdraw under

¹The Honorable Thomas M. Shanahan, United States District Judge for the District of Nebraska.

Anders v. California, 386 U.S. 738 (1967), and Napoles-Garcia has not filed a pro se supplemental brief.

Counsel first argues that Napoles-Garcia's prior deportation following his conviction for an aggravated felony was an element of the instant offense under Appendi v. New Jersey, 530 U.S. 466 (2000), and that the district court's failure to so advise him rendered his guilty plea invalid. This argument lacks merit. See Almendarez-Torres v. United States, 523 U.S. 224, 226-27 (1998); United States v. Raya-Ramirez, 244 F.3d 976, 977 (8th Cir. 2001). Second, counsel argues that the sentence imposed is too harsh. This does not provide a valid basis for appeal. See 18 U.S.C. § 3742(a).

Having located no nonfrivolous issues for appeal after reviewing the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), 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.