

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-3432

United States of America,

Appellee,

v.

Anthony Arnez Sanford,

Appellant.

*
*
*
* Appeal from the United States
* District Court for the
* Southern District of Iowa.
*
* [UNPUBLISHED]
*

Submitted: June 15, 2005

Filed: July 5, 2005

Before MELLOY, McMILLIAN, and GRUENDER, Circuit Judges.

PER CURIAM.

Anthony Sanford challenges the sentence the district court¹ imposed after he pleaded guilty to a drug conspiracy. His counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that it was plain error under Blakely v. Washington, 124 S. Ct. 2531 (2004), for the court to assess two criminal history points based on Sanford's probationary status at the time he committed the instant offense.

¹The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

This argument fails. A jury need not find the fact of a prior conviction, see United States v. Booker, 125 S. Ct. 738, 755-56 (2005), and Sanford did not object to the presentence report's factual determination that he was on probation for a prior conviction when he committed the instant offense, see United States v. Speller, 356 F.3d 904, 907 (8th Cir. 2004).

Having reviewed the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues. Accordingly, we affirm, and we grant counsel's motion to withdraw.
