

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-2168

United States of America,

Appellee,

v.

John Merced Lozano, also known as
Juan Merced Lozano,

Appellant.

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

[UNPUBLISHED]

Submitted: February 15, 2008
Filed: March 3, 2008

Before MURPHY, COLLOTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

John Merced Lozano pleaded guilty to conspiring to distribute and possess with intent to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846 (Count 1), being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) (Count 2), and possessing firearms in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i) (Count 3); and to a forfeiture count. The district court¹ imposed concurrent prison

¹The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

terms of 262 months on Count 1 and 120 months on Count 2, and a consecutive term of 60 months on Count 3, with the total of 322 months to run consecutively to Lozano's undischarged state prison term. The court also imposed a total of 5 years of supervised release. On appeal, Lozano's counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), seeking to withdraw and arguing that Lozano's sentence is unreasonable and amounts to cruel and unusual punishment. Lozano has filed a motion for appointment of new counsel and a pro se brief. For the following reasons, we affirm.

We conclude that Lozano's sentence, which was at the bottom of the advisory Guidelines range, is not unreasonable. See Rita v. United States, 127 S. Ct. 2456, 2462 (2007); United States v. Lincoln, 413 F.3d 716, 717-18 (8th Cir. 2005). The district court expressly considered relevant factors under 18 U.S.C. § 3553(a), and nothing in the record suggests that the court misapplied those factors. See United States v. Haack, 403 F.3d 997, 1004 (8th Cir. 2005). We also find no basis to conclude that Lozano's sentence amounted to cruel and unusual punishment. See United States v. Weis, 487 F.3d 1148, 1154 (8th Cir. 2007) ("It is rare for a term of years within the authorized statutory range to violate the Eighth Amendment."). We note that any ineffective-assistance claim Lozano may have should be pursued in a proceeding under 28 U.S.C. § 2255. See United States v. Hughes, 330 F.3d 1068, 1069 (8th Cir. 2003).

Finally, having reviewed the record independently under Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues. Accordingly, we affirm the district court's judgment, we deny Lozano's motion for counsel, and we grant counsel's request to withdraw on condition that counsel inform appellant about the procedures for filing petitions for rehearing and for certiorari.