

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 11-3770

United States of America,

Appellee,

v.

Cristobal Arellano-Gutierrez,

Appellant.

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* Appeal from the United States

* District Court for the Western

* District of Arkansas.

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* [UNPUBLISHED]

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Submitted: May 16, 2012

Filed: May 22, 2012

Before MURPHY, ARNOLD, and SHEPHERD, Circuit Judges.

PER CURIAM.

Cristobal Arellano-Gutierrez appeals the statutory-minimum sentence the district court¹ imposed after he pleaded guilty to possessing with intent to distribute more than five kilograms of a mixture or substance containing cocaine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(ii)(II). On appeal, his counsel seeks leave to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967).

¹The Honorable P. K. Holmes, III, Chief Judge, United States District Court for the Western District of Arkansas.

To the extent the Anders brief may be read as challenging the imposition of the statutory-minimum sentence, we conclude the argument fails because the government did not move for a sentence below the statutory minimum based on substantial assistance, and nothing in the record indicates that Arellano-Gutierrez disclosed all of the information he had concerning his offense. See United States v. Chacon, 330 F.3d 1065, 1066 (8th Cir. 2003) (only authority for court to depart below statutory minimum sentence is in 18 U.S.C. § 3553(e) and (f), which apply only when government files motion based on defendant's substantial assistance or when defendant qualifies under safety-valve provision); see also 18 U.S.C. § 3553(f) (in case of offense under § 841, court shall impose sentence in accordance with Guidelines without regard to statutory minimum sentence if court finds, inter alia, that not later than time of sentencing hearing, defendant has truthfully provided to government all information and evidence defendant has concerning offense or offenses that were part of same course of conduct or of common scheme or plan).

Having reviewed the record under Penson v. Ohio, 488 U.S. 75, 80 (1988), we have found no nonfrivolous issues. Accordingly, we affirm, and we grant counsel leave to withdraw, subject to counsel informing Arellano-Gutierrez about the procedures for seeking rehearing and petitioning for a writ of certiorari.
