United States Court of Appeals
For the Eighth Circuit

No. 13-1718

United States of America,

Plaintiff - Appellee,

v.

Cedric Dion Edwards, also known as Fat Ced,

Defendant - Appellant.

Appeal from United States District Court
for the Eastern District of Arkansas - Little Rock

Submitted: September 6, 2013
Filed: September 17, 2013
[Unpublished]

Before LOKEN, COLLOTON, and KELLY, Circuit Judges.

PER CURIAM.

Cedric Edwards directly appeals after he pleaded guilty to a drug charge and the district court[1] imposed a within-Guidelines-range sentence. His counsel has moved

[1]The Honorable James M. Moody, United States District Judge for the Eastern District of Arkansas.

to withdraw, and in a brief filed under Anders v. California, 386 U.S. 738 (1967), he argues that the district court committed reversible error at sentencing. In a pro se supplemental brief, Edwards argues that he should not have been classified as a career offender, because one of the predicate convictions, a 2010 controlled-substance offense, was not actually sustained because the charge was dismissed. Citing Alleyne v. United States, 133 S. Ct. 2151 (2013), he also argues that his Fifth and Sixth Amendment rights were violated because his career-offender status was not alleged in the indictment. He suggests that his plea was unknowing, and also that counsel rendered ineffective assistance.

Addressing the pro se arguments first, we note that Edwards stipulated in his written plea agreement that he believed he was a career offender. He did not object to the presentence report's statement that the 2010 conviction existed, and the district court was entitled to accept the stipulated and unobjected-to fact as true. See United States v. Douglas, 646 F.3d 1134, 1137 (8th Cir. 2011); United States v. Early, 77 F.3d 242, 244 (8th Cir. 1996) (per curiam). In any event, because Edwards did not raise the matter at sentencing, we review only for plain error, see United States v. Troyer, 677 F.3d 356, 358 (8th Cir. 2012), and he fails to show an obvious error occurred. Edwards offers nothing more than his bald assertion to dispute the fact of his 2010 conviction.

Edwards's complaint that his sentence is unconstitutional because the indictment did not charge his career-offender status is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), which remains good law. See Alleyne, 133 S. Ct. at 2160 n.1; see also United States v. Sohn, 567 F.3d 392, 394-96 (8th Cir. 2009). We decline to consider Edwards's ineffective-assistance claims on direct review, see United States v. McAdory, 501 F.3d 868, 872-73 (8th Cir. 2007), and his suggestion that his guilty plea was unknowing is not cognizable because he made no attempt to withdraw his plea. United States v. Villareal-Amarillas, 454 F.3d 925, 932 (8th Cir. 2006).

As to the Anders brief argument, we find that the district court did not abuse its discretion in sentencing Edwards. See generally United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc). Having independently reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues.

Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw.
