

United States Court of Appeals
For the Eighth Circuit

No. 17-1510

United States of America

Plaintiff - Appellee

v.

Scottie O'Neal McDuffie

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Davenport

Submitted: November 6, 2017

Filed: November 9, 2017

[Unpublished]

Before WOLLMAN, GRUENDER, and BENTON, Circuit Judges.

PER CURIAM.

Scottie O'Neal McDuffie pled guilty to one count of producing child pornography, in violation of 18 U.S.C. § 2251(a) and (e), and two counts of possessing child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B) and (b)(2). In a brief filed under *Anders v. California*, 386 U.S. 738 (1967), counsel challenges

the application of certain Sentencing Guidelines provisions. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

The district court¹ sentenced McDuffie to an aggregate prison term of 480 months. McDuffie challenges, as a matter of plain error, the application of a five-level increase to his offense level for a pattern of activity involving prohibited sexual conduct in combination with a multiple-victim increase. This court concludes that his substantial rights were not affected. *See* Fed. R. Crim. P. 52(b) (plain error that affects substantial rights may be considered even though it was not brought to the court's attention); *United States v. Peck*, 496 F.3d 885, 890-91 (8th Cir. 2007) (finding an increase for multiple victims and an increase under U.S.S.G. § 4B1.5 for a pattern of prohibited sexual activity does not result in double counting). McDuffie also raises a preserved challenge to the district court's application of a four-level increase for material involving sadistic or masochistic depictions. This court has previously rejected this challenge under circumstances similar to those presented in this case. *See United States v. Belflower*, 390 F.3d 560, 561-62 (8th Cir. 2004).

Following independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 80 (1988), this court finds no nonfrivolous issues for appeal.

The judgment is affirmed. Counsel's motion to withdraw is granted.

¹The Honorable John A. Jarvey, Chief Judge, United States District Court for the Southern District of Iowa.