

United States Court of Appeals
For the Eighth Circuit

No. 21-2490

United States of America

Plaintiff - Appellee

v.

Timothy Whittington

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Springfield

Submitted: November 23, 2021

Filed: November 30, 2021

[Unpublished]

Before KELLY, ERICKSON, and STRAS, Circuit Judges.

PER CURIAM.

Timothy Whittington received a 120-month prison sentence after he pleaded guilty to committing a child-pornography offense. *See* 18 U.S.C. § 2252(a)(2), (b)(1). In an *Anders* brief, Whittington's counsel suggests that the sentence is substantively unreasonable. *See Anders v. California*, 386 U.S. 738 (1967). A pro se supplemental brief raises a host of other claims.

We conclude that Whittington’s sentence is substantively reasonable. *See United States v. McKanry*, 628 F.3d 1010, 1022 (8th Cir. 2011) (recognizing that “it is nearly inconceivable that” once a district court has varied downward, it “abuse[s] its discretion in not varying downward [even] further” (quotation marks omitted)). The record establishes that the district court¹ sufficiently considered the statutory sentencing factors, 18 U.S.C. § 3553(a), and did not rely on an improper factor or commit a clear error of judgment. *See United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc).

Whittington’s other claims fare no better. The district court’s comments do not support a judicial-bias claim, *see Liteky v. United States*, 510 U.S. 540, 555 (1994); the prosecutors did not engage in misconduct, *see United States v. Hunter*, 770 F.3d 740, 743 (8th Cir. 2014); the district court never prohibited him from withdrawing his guilty plea, *see United States v. Foy*, 617 F.3d 1029, 1033–34 (8th Cir. 2010); and the ineffective-assistance-of-plea-counsel claim will have to await “collateral” review, *United States v. Ramirez-Hernandez*, 449 F.3d 824, 826–27 (8th Cir. 2006).

Finally, we have independently reviewed the record and conclude that no other non-frivolous issues exist. *See Penson v. Ohio*, 488 U.S. 75, 82–83 (1988). We accordingly affirm the judgment of the district court and grant counsel permission to withdraw.

¹The Honorable M. Douglas Harpool, United States District Judge for the Western District of Missouri.