United States Court of Appeals
For the Eighth Circuit

No. 24-1752

United States of America

Plaintiff - Appellee

v.

John Christian Richmond

Defendant - Appellant

Appeal from United States District Court
for the District of North Dakota - Western

Submitted: August 22, 2024
Filed: August 29, 2024
[Unpublished]

Before KELLY, STRAS, and KOBES, Circuit Judges.

PER CURIAM.

After pleading guilty to conspiring to distribute a mixture or substance containing fentanyl, John Richmond received an 87-month sentence. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(vi), 846. An *Anders* brief suggests the sentence is procedurally and substantively flawed. *See Anders v. California*, 386 U.S. 738 (1967). A pro se supplemental brief makes some of the same arguments and adds

one more: counsel was ineffective for failing to object to an upward departure. *See* U.S.S.G. § 4A1.3(a).

We conclude that the challenges are waived, meritless, or premature. Richmond "intentional[ly] relinquish[ed]" any challenge to the departure by informing the district court[1] that he was "not going to object to it." *United States v. Olano*, 507 U.S. 725, 733 (1993) (citation omitted); *cf. United States v. Eagle Pipe*, 911 F.3d 1245, 1247 (8th Cir. 2019). The court then calculated the new range, selected a sentence, and explained its reasoning. *See United States v. Brown*, 992 F.3d 665, 672 (8th Cir. 2021) (reviewing the court's explanation for plain error when the defendant did not object). In doing so, it 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 Brown*, 992 F.3d at 673–74 (reviewing for an abuse of discretion and explaining that "giv[ing] some factors [more or] less weight than a defendant prefers . . . does not justify reversal" (citation omitted)). And as for the argument that counsel provided ineffective assistance, it will have to await collateral review. *See United States v. Ramirez-Hernandez*, 449 F.3d 824, 827 (8th Cir. 2006) (explaining that ineffective-assistance claims are "more properly raised in a separate motion under 28 U.S.C. § 2255").

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.

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[1]The Honorable Daniel M. Traynor, United States District Judge for the District of North Dakota.