

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**MAY 18 1999**

**PATRICK FISHER**  
Clerk

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UNITED STATES OF AMERICA,

Plaintiff - Appellant,

vs.

JAMES COVINGTON,

Defendant - Appellee.

No. 98-7131

(D.C. No. 97-CR-58-S)

(E.D. Okla.)

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**ORDER AND JUDGMENT\***

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Before **ANDERSON, KELLY, and BRISCOE**, Circuit Judges.\*\*

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Mr. Covington entered a plea of guilty to interstate domestic violence, 18 U.S.C. § 2261(a)(2), and was sentenced to 97 months imprisonment and three years supervised release. With an offense level of 27 and a criminal history category of II, Mr. Covington was sentenced at the top of the guideline range of 78-97 months. See USSG ch. 5, part A (Sentencing Table). He now appeals,

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1 (G). The cause is therefore ordered submitted without oral argument.

contending that the district courts improperly sentenced him at the top of the guideline range. We lack jurisdiction to interfere with the district court's discretion to sentence within the guideline range; no exceptional conditions have been shown. See Koon v. United States, 518 U.S. 81, 97 (1996); United States v. Smith, 81 F.3d 915, 920 (10th Cir. 1996).

Counsel, having filed an Anders brief, has moved to withdraw as attorney of record. The motion is granted.

APPEAL DISMISSED.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge