

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-1878

United States of America,

Appellee,

v.

Rafael Lepez-Castillo,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: September 7, 2001

Filed: September 12, 2001

Before WOLLMAN, Chief Judge, MORRIS SHEPPARD ARNOLD, and BYE,
Circuit Judges.

PER CURIAM.

Rafael Lepez-Castillo, a Mexican citizen, appeals the sentence of 77 months imprisonment and 3 years supervised release imposed on him by the district court¹ after he pleaded guilty to illegal reentry following deportation, in violation of 8 U.S.C. § 1326(a) and (b)(2). On appeal, he argues that the court erroneously concluded it lacked authority to depart on account of extraordinary cultural assimilation.

¹The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

Our review of the sentencing transcript reveals that the district court assumed without deciding that it had authority to consider the asserted ground for departure. Because the court then declined to depart as a discretionary matter, we will not review its decision. See United States v. Orozco-Rodriguez, 220 F.3d 940, 942 (8th Cir. 2000) (district court's decision not to depart downward is unreviewable so long as court was aware of its authority to depart).

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.