

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-2964

United States of America,

Appellee,

v.

Guadalupe Perez-Cano,

Appellant.

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

[UNPUBLISHED]

Submitted: January 22, 2002

Filed: January 29, 2002 (Corrected: 02/08/02)

Before LOKEN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

Guadalupe Perez-Cano pleaded guilty to illegal reentry following deportation after conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a), and the district court¹ sentenced him to 77 months imprisonment and 3 years supervised release. On appeal, counsel has moved to withdraw under Anders v. California, 386 U.S. 738 (1967), and has filed a brief arguing that the court erred when it denied Mr. Perez-Cano's downward-departure motion.

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

As the court “elect[ed] not to depart in this case,” and Mr. Perez-Cano does not suggest the court acted with an unconstitutional motive, its discretionary decision not to depart is unreviewable. See United States v. Johnson, 169 F.3d 569, 573 (8th Cir. 1999) (district court’s discretionary decision not to depart downward is reviewable only if court acted with unconstitutional motive or believed it lacked authority to depart); United States v. Field, 110 F.3d 587, 591-92 (8th Cir. 1997) (district court’s conclusion “under the facts of this case” that downward departure was not warranted fairly indicated it recognized its authority to depart) (internal quotations omitted).

Following our independent review, see Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues. Accordingly, we affirm and grant counsel’s motion to withdraw.

A true copy.

Attest:

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