

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-4007

United States of America,

Appellee,

v.

Eddie Graves,

Appellant.

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

[UNPUBLISHED]

Submitted: July 3, 2003
Filed: July 17, 2003

Before WOLLMAN, RILEY, and MELLOY, Circuit Judges.

PER CURIAM.

In this direct criminal appeal, Graves challenges the sentence the district court¹ imposed after he pleaded guilty to conspiring to distribute, and to possess with intent to distribute, 5 kilograms or more of a substance containing cocaine, in violation of 21 U.S.C. §§ 841(b)(1), 846. The district court sentenced Graves to 120 months imprisonment and 5 years supervised release. On appeal, Graves's counsel has moved to withdraw under Anders v. California, 386 U.S. 738 (1967), arguing that the district court erred in denying his motion for a downward departure.

¹The Honorable Laurie Smith Camp, United States District Judge for the District of Nebraska.

The district court's decision not to grant the downward departure was clearly discretionary; thus, the decision is unreviewable. See United States v. VanHouten, 307 F.3d 693, 696 (8th Cir. 2002) (discretionary decision not to depart from Guidelines is unreviewable on appeal absent unconstitutional motive, unless district court erroneously concluded it lacked authority to depart).

Following careful review of the record, we find no other nonfrivolous issues. See Penson v. Ohio, 488 U.S. 75, 80 (1988). Accordingly, the judgment is affirmed. We also grant counsel's motion to withdraw.

A true copy.

Attest:

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