

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-1627

United States of America,

Appellee,

v.

Paul Lopez-Aguilar,

Appellant.

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* Appeal from the United States

* District Court for the

* District of Nebraska.

* [UNPUBLISHED]

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Submitted: December 22, 2005

Filed: December 28, 2005

Before MELLOY, HANSEN, and GRUENDER, Circuit Judges.

PER CURIAM.

After Paul Lopez-Aguilar pleaded guilty to conspiring to distribute and possess with intent to distribute methamphetamine, and possessing a firearm during a drug-trafficking crime, see 21 U.S.C. § 846; 18 U.S.C. § 924(c)(1), the district court¹ sentenced him to 228 months in prison, followed by 5 years of supervised release. Lopez-Aguilar did not appeal. The government later filed a Federal Rule of Criminal Procedure 35(b) motion to reduce Lopez-Aguilar's sentence based on his substantial

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

assistance, and the district court reduced his sentence from 228 months to 135 months imprisonment. Lopez-Aguilar appeals, arguing in a brief filed under Anders v. California, 386 U.S. 738 (1967), that the district court abused its discretion by not imposing an even lower sentence. We conclude that the district court's refusal to depart further is unreviewable. See United States v. Coppedge, 135 F.3d 598, 599 (8th Cir. 1998) (per curiam) (challenge to extent of Rule 35(b) reduction held unreviewable, because appeal was not based on any criteria listed in 18 U.S.C. § 3742(a)); cf. United States v. Noe, 411 F.3d 878, 885 (8th Cir.) (extent of downward departure is not reviewable), cert. denied, 126 S. Ct. 184 (2005); United States v. Williams, 324 F.3d 1049, 1050 (8th Cir. 2003) (per curiam) (refusal to depart is not reviewable unless defendant makes substantial showing that court's decision was based on unconstitutional motive).

After reviewing the record independently under Penson v. Ohio, 488 U.S. 75 (1988), we have found no nonfrivolous issues. Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw.
