

United States Court of Appeals
For the Eighth Circuit

No. 20-1143

United States of America

Plaintiff - Appellee

v.

Randall Mark Gilbert

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Cedar Rapids

Submitted: February 9, 2021

Filed: February 12, 2021

[Unpublished]

Before BENTON, MELLOY, and KELLY, Circuit Judges.

PER CURIAM.

Randall Gilbert appeals the below-Guidelines sentence imposed by the district court¹ after he pleaded guilty to a drug offense. His counsel has moved for leave to

¹The Honorable C.J. Williams, United States District Judge for the Northern District of Iowa.

withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the district court erred by failing to grant a downward departure and that the sentence is unreasonable.

Upon careful review, we conclude that we lack authority to review the district court's decision not to depart downward, as there is no indication that the district court failed to recognize its authority to depart downward. See United States v. Dixon, 650 F.3d 1080, 1084 (8th Cir. 2011) (district court's refusal to grant downward departure is unreviewable unless court had unconstitutional motive in denying request or failed to recognize its authority to depart downward). We also conclude that the district court did not impose a substantively unreasonable sentence, as the court properly considered the factors listed in 18 U.S.C. § 3553(a) and did not err in weighing the relevant factors. See United States v. Feemster, 572 F.3d 455, 461-62 (8th Cir. 2009) (sentences are reviewed for substantive reasonableness under deferential abuse of discretion standard; abuse of discretion occurs when court fails to consider relevant factor, gives significant weight to improper or irrelevant factor, or commits clear error of judgment in weighing appropriate factors). Further, the court imposed a sentence below the Guidelines range. See United States v. McCauley, 715 F.3d 1119, 1127 (8th Cir. 2013) (noting that when district court has varied below Guidelines range, it is "nearly inconceivable" that court abused its discretion in not varying downward further).

We have also independently reviewed the record under Penon v. Ohio, 488 U.S. 75 (1988), and we find no non-frivolous issues for appeal. Accordingly, we affirm the judgment, and we grant counsel's motion to withdraw.