

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 99-3538

United States of America,

Appellee,

v.

Patricia Tew,

Appellant.

*
*
*
*
*
*
*
*

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

[UNPUBLISHED]

Submitted: March 6, 2000
Filed: March 14, 2000

Before LOKEN, FAGG, and HANSEN, Circuit Judges.

PER CURIAM.

Patricia Tew pleaded guilty to conspiring to distribute methamphetamine in violation of 21 U.S.C. § 846. Following an evidentiary sentencing hearing, the district court¹ sentenced Tew to 151 months in prison and five years supervised release, based upon its drug quantity finding that she was responsible for distributing more than two kilograms of methamphetamine. On appeal, Tew argues this drug-quantity finding was clearly erroneous. We reject this contention because the finding was based upon the

¹The HONORABLE RICHARD G. KOPF, United States District Judge for the District of Nebraska.

testimony of two witnesses, and the district court's witness credibility findings are virtually unreviewable on appeal. See United States v. Johnson, 169 F.3d 1092, 1098 (8th Cir.), cert. denied, 120 S. Ct. 143 (1999).

Tew next argues the government impermissibly refused to file a substantial-assistance motion because of her gender or national origin. This argument was not raised in the district court, and in any event Tew has failed to make a substantial threshold showing of an unconstitutional motive. See Wade v. United States, 504 U.S. 181, 186 (1992); United States v. Wilkerson, 179 F.3d 1083, 1086 (8th Cir. 1999). Finally, Tew argues the United States Sentencing Commission violates the constitutional separation of powers doctrine, an argument foreclosed by Mistretta v. United States, 488 U.S. 361, 412 (1989).

The judgment of the district court is affirmed.

A true copy.

Attest:

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