

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

No. 00-1071

United States of America,

Appellee,

v.

Billy Joe Girty,

Appellant.

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Appeal from the United States
District Court for the
Western District of Arkansas.

[UNPUBLISHED]

Submitted: June 7, 2000
Filed: June 13, 2000

Before RICHARD S. ARNOLD, BOWMAN, and BEAM, Circuit Judges.

PER CURIAM.

Billie Joe Girty appeals the District Court's¹ sentence following his guilty plea to drug trafficking in violation of 21 U.S.C. § 841(a)(1) (1994). The District Court denied Girty's motion for downward departure under U.S. Sentencing Guidelines Manual § 4A1.3 (policy statement) (1998), and sentenced him to 77 months imprisonment and 5 years supervised release. On appeal, Girty argues the District

¹The Honorable Robert T. Dawson, United States District Judge for the Western District of Arkansas.

Court believed it lacked authority to depart and failed to address his downward-departure motion.

Having carefully reviewed the record, we conclude that the District Court was well aware of the motion before it, and denied the motion as a discretionary matter, with full knowledge of its authority to depart under § 4A1.3. See United States v. Correa, 167 F.3d 414, 417 (8th Cir. 1999) (denial of downward departure was unreviewable where district court considered defendant's arguments, found no extraordinary circumstances warranting departure, and did not indicate it lacked authority to depart); United States v. Payne, 81 F.3d 759, 765 (8th Cir. 1996) (denial of § 4A1.3 departure was unreviewable where district court heard argument from both parties at sentencing regarding departure and overall context of court's statements indicated it was aware of authority but chose not to depart based on merits of defendant's request). Accordingly, we affirm.

A true copy.

Attest:

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