

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-1160

United States of America,

Appellee,

v.

John Lee Sanders, also known as
Tommy Wayne McCullough,

Appellant.

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Appeal from the United States
District Court for the
Southern District of Iowa.
[Unpublished]

Submitted: July 20, 2000
Filed: July 28, 2000

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

PER CURIAM.

John Lee Sanders appeals the district court's¹ sentence imposed following his guilty plea to drug trafficking, in violation of 21 U.S.C. § 841(a)(1). At sentencing, the district court departed downward, agreeing with Sanders that his criminal history category overstated the seriousness of his criminal history, but declined to depart under U.S. Sentencing Guidelines Manual § 5K2.16, p.s. (1998) based on Sanders's post-arrest disclosure of certain additional drugs hidden in his home. While noting it had

¹The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

discretion to depart under section 5K2.16, the district court found that Sanders already had been credited for his disclosure as the additional drugs were not considered in establishing his base offense level, and that Sanders's case did not fall outside the heartland. On appeal, counsel moved to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967), filing a brief in which he raises the issue whether the district court erred in denying Sanders a downward departure for his disclosure. Sanders has not filed a pro se supplemental brief.

Having carefully reviewed the record, we conclude counsel's argument is unreviewable. See United States v. Correa, 167 F.3d 414, 417 (8th Cir. 1999) (denial of downward departure unreviewable where district court considered defense's arguments, found no extraordinary circumstances warranting departure, and did not indicate it lacked authority to depart); United States v. Field, 110 F.3d 587, 591 (8th Cir. 1997) (discretionary decision not to depart downward from Guidelines is unreviewable on appeal absent unconstitutional motive).

In accordance with Penson v. Ohio, 488 U.S. 75 (1988), we have reviewed the record for any non-frivolous issues and have found none.

Accordingly, we affirm the judgment of the district court and grant counsel's motion to withdraw.

A true copy.

Attest:

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