

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

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No. 00-2137

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United States of America,

Appellee,

v.

John Burton Devore, Jr.,

Appellant.

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Appeal from the United States  
District Court for the  
Northern District of Iowa.

[UNPUBLISHED]

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Submitted: August 3, 2000

Filed: August 9, 2000

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Before McMILLIAN, BOWMAN, and MORRIS SHEPPARD ARNOLD, Circuit  
Judges.

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PER CURIAM.

John Devore, Jr., pleaded guilty of being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (1994), and was sentenced to fifty-seven months imprisonment and three years supervised release. On appeal, his counsel has tendered a brief and moved to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967). Counsel argues that the District Court<sup>1</sup> erred in denying Devore's downward-departure motion (premised on the purpose for which he

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<sup>1</sup>The Honorable Mark W. Bennett, United States District Judge for the Northern District of Iowa.

possessed the firearm), and in sentencing Devore at the top of the Guidelines range. Although Devore was invited to submit a pro se supplemental brief, he did not do so.

As Devore's counsel acknowledges, both of the issues he raises are unreviewable. The District Court's discretionary denial of Devore's departure motion is unreviewable. See United States v. Turechek, 138 F.3d 1226, 1228 (8th Cir. 1998). Devore did not object that his Guidelines range was calculated improperly, and his sentence is not reviewable merely because it is at the top of that range. See United States v. Woodrum, 959 F.2d 100, 101 (8th Cir. 1992) (per curiam).

We have reviewed the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), and we have found no nonfrivolous issues. Accordingly, we affirm the judgment of the District Court, and we grant counsel's motion to withdraw.

A true copy.

Attest:

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