

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-2253

United States of America,

Appellee,

v.

Eric Michael,

Appellant.

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* Appeal from the United States
* District Court for the
* District of Nebraska.
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* [UNPUBLISHED]
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Submitted: March 21, 2001

Filed: March 27, 2001

Before HANSEN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

Eric Michael pleaded guilty to conspiring to distribute and possess with intent to distribute cocaine base, in violation of 21 U.S.C. § 846, and was sentenced to 168 months imprisonment and 5 years supervised release. Michael filed a presentencing motion to withdraw his plea, alleging that the government had acted in bad faith by causing him to plead guilty pursuant to a plea agreement which did not include a substantial-assistance downward-departure provision, and withholding a plea agreement which did include such a provision, despite Michael's proffer of information

to authorities. The district court¹ denied his motion, concluding after a hearing that Michael had not carried his burden to present a fair and just reason for plea withdrawal. On appeal, Michael's counsel challenges the denial of the plea-withdrawal motion. We grant Michael's request to file a second pro se supplemental brief, and we have considered his two pro se briefs.

We conclude that the district court did not abuse its discretion in denying Michael's plea-withdrawal motion. See United States v. Knight, 96 F.3d 307, 309 (8th Cir. 1996) (standard of review; defendant who asserted that government promised to file departure motion did not demonstrate fair and just reason where promise was not contained in written plea agreement, and defendant had acknowledged that written agreement covered his entire understanding with government), cert. denied, 520 U.S. 1180 (1997); United States v. Kelly, 18 F.3d 612, 618-19 (8th Cir. 1994) (district court did not abuse discretion in denying plea-withdrawal motion premised on government's refusal to move for substantial-assistance downward departure where government did not breach plea agreement or unconstitutionally withhold motion). We have considered each of Michael's pro se arguments and find them meritless.

Accordingly, we affirm the judgment of the district court.

A true copy.

Attest:

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

¹The Honorable Lyle E. Strom, United States District Judge for the District of Nebraska.