

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

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No. 00-3824

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United States of America,

Appellee,

v.

Kenneth C. Campbell,

Appellant.

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

[UNPUBLISHED]

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Submitted: April 6, 2001

Filed: April 10, 2001

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Before MORRIS SHEPPARD ARNOLD, RICHARD S. ARNOLD, and FAGG,  
Circuit Judges.

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PER CURIAM.

Kenneth C. Campbell appeals the sentence imposed by the district court after Campbell pleaded guilty to conspiring to distribute cocaine base. On appeal, Campbell challenges the district court's denial of Campbell's downward-departure motion, and contends the use of his prior convictions to establish his criminal history category and resulting imprisonment range violates Apprendi v. New Jersey, 120 S. Ct. 2348 (2000). We disagree. The district court's denial of Campbell's downward-departure motion is unreviewable because the court was aware of its authority to depart and declined to do

so, and Campbell's Apprendi argument is without merit because there is no requirement that past convictions be included in the indictment, submitted to the jury, and proven beyond reasonable doubt. See Apprendi, 120 S. Ct. at 2362-63.

Accordingly, we affirm the judgment of the district court.

A true copy.

Attest:

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