

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-3487NE

United States of America,

Appellee,

v.

Leroy Sears,

Appellant.

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

*

* [Not To Be Published]

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Submitted: April 24, 2001

Filed: May 7, 2001

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

PER CURIAM.

Leroy Sears pleaded guilty to conspiring to distribute and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. § 846. The District Court¹ denied his request for a downward departure on the bases of his cultural assimilation into the United States and the hardships he would suffer if deported. Sears was sentenced to seven-and-a-half years (ninety months) imprisonment and five years

¹The Honorable Warren K. Urbom, United States District Judge for the District of Nebraska.

supervised release. On appeal, he argues that the Court erroneously concluded that it lacked authority to depart.

We have carefully reviewed the transcript of the sentencing hearing. The District Court's comments show that it did not believe it lacked authority to grant either a cultural-assimilation or a deportation-related-hardship downward departure; rather, it denied Sears such departures because of the particular facts and circumstances of his case. Thus, the matter is unreviewable on appeal. See United States v. Bahena, 223 F.3d 797, 807 (8th Cir. 2000), cert. denied, 121 S. Ct. 1163 (2001); United States v. Lipman, 133 F.3d 726, 731-32 (9th Cir. 1998).

Accordingly, we affirm the judgment of the District Court.

A true copy.

Attest:

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