

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-2687

United States of America,

Appellee,

v.

Joel W. Clark,

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* [UNPUBLISHED]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: December 19, 2001

Filed: December 27, 2001

Before BOWMAN, LOKEN, and BYE, Circuit Judges.

PER CURIAM.

Joel W. Clark pleaded guilty to possessing three or more matters containing visual depictions of minors engaging in sexually explicit conduct, in violation of 18 U.S.C. § 2252(a)(4)(B), and to criminal forfeiture under 18 U.S.C. § 2253. The district court¹ sentenced him to 27 months imprisonment and 2 years supervised release, and that sentence is the subject of this appeal. Counsel has filed a brief and moved to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967). Clark has filed a supplemental pro se brief.

¹The Honorable Thomas M. Shanahan, United States District Judge for the District of Nebraska.

We reject the arguments Clark and his counsel have raised. First, the district court's denial of Clark's downward-departure motion is unreviewable because the court's decision not to depart was an exercise of discretion. See United States v. Turechek, 138 F.3d 1226, 1228 (8th Cir. 1998). Second, Clark's claim of ineffective assistance of counsel is not properly raised in this direct criminal appeal. See United States v. Martin, 59 F.3d 767, 771 (8th Cir. 1995) (claim of ineffective assistance of counsel should normally be raised in proceeding under 28 U.S.C. § 2255, rather than direct criminal appeal).

Having reviewed the record independently pursuant to Penon v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues. Accordingly, we affirm, and we grant counsel's motion to withdraw.

A true copy.

Attest:

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