

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-2879

United States of America,

Appellee,

v.

Arnulfo Lizarraga-Lopez,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.
[UNPUBLISHED]

Submitted: January 30, 2002

Filed: February 7, 2002

Before WOLLMAN,¹ Chief Judge, FAGG, and MURPHY, Circuit Judges.

PER CURIAM.

Arnulfo Lizarraga-Lopez pleaded guilty to conspiring to distribute and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. The district court² sentenced him to 87 months in prison and 5 years of

¹The Honorable Roger L. Wollman stepped down as Chief Judge of the United States Court of Appeals for the Eighth Circuit at the close of business on January 31, 2002. He has been succeeded by the Honorable David R. Hansen.

²The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

supervised release. On appeal, counsel has moved to withdraw under Anders v. California, 386 U.S. 738 (1967), and filed a brief raising the issue whether the district court erred in denying Lizarraga-Lopez's motion for downward departure based on his status as a deportable alien and his willingness to waive deportation proceedings.

At sentencing the district court acknowledged its authority to depart, and thus its discretionary decision not to depart under the circumstances in this case is unreviewable. See United States v. Lim, 235 F.3d 382, 385 (8th Cir. 2000).

Moreover, following our independent review, see Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues. Accordingly, we affirm the sentence, and we grant counsel's motion to withdraw.

A true copy.

Attest:

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