

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-3488

United States of America,

Appellee,

v.

Linda O'Tool,

Appellant.

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

[UNPUBLISHED]

Submitted: April 5, 2002
Filed: April 10, 2002

Before McMILLIAN, BOWMAN, and MURPHY, Circuit Judges.

PER CURIAM.

Linda O'Tool challenges the sentence imposed by the District Court¹ after she pleaded guilty to interstate transportation of stolen property. See 18 U.S.C. § 2314 (2000). She was sentenced to fifteen months' imprisonment and three years' supervised release, and was ordered to pay \$197,744.86 in restitution. Her counsel has filed a brief and moved to withdraw under Anders v. California, 386 U.S. 738 (1967), and O'Tool has not filed a pro se supplemental brief.

¹The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

Counsel first argues that the District Court erred in calculating the amount of loss and restitution. This argument fails because O'Tool withdrew her objections to the presentence report, and the court was entitled to rely on the unobjected-to facts in it regarding that amount. See United States v. Allen, 75 F.3d 439, 442 (8th Cir. 1996). Counsel also argues that the District Court should have granted a requested downward departure, but this matter is unreviewable on appeal because the court acknowledged its authority to depart and declined to do so. See United States v. Wolf, 270 F.3d 1188, 1192 (8th Cir. 2001).

After reviewing the record independently pursuant to Penon v. Ohio, 488 U.S. 75 (1988), we have found no non-frivolous issues. Accordingly, we affirm the judgment of the District Court, and we grant counsel's motion to withdraw.

A true copy.

Attest:

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