

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-2175

United States of America,

Appellee,

v.

Perdis Cotton,

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* [UNPUBLISHED]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 26, 2003

Filed: January 6, 2004

Before BYE, BOWMAN, and MELLOY, Circuit Judges.

PER CURIAM.

Perdis Cotton challenges the sentence the district court¹ imposed after he pleaded guilty to conspiring to distribute, and to possess with intent to distribute, 50 grams or more of a substance containing cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1), and 846. The district court granted Cotton a downward departure under U.S.S.G. § 5G1.3(b), comment. (n.7), and sentenced him to 299 months imprisonment and 5 years supervised release. On appeal, Cotton's counsel

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

has moved to withdraw under Anders v. California, 386 U.S. 738 (1967), arguing the court erred in not granting a further downward departure based on Cotton's overstated criminal history.

The district court's decision not to grant the downward departure was discretionary; thus, the decision is unreviewable. See United States v. VanHouten, 307 F.3d 693, 696 (8th Cir. 2002) (discretionary decision not to depart from Guidelines is unreviewable on appeal absent unconstitutional motive, unless district court erroneously concluded it lacked authority to depart).

Following careful review of the record, we find no other nonfrivolous issues. See Penson v. Ohio, 488 U.S. 75, 80 (1988). Accordingly, the judgment is affirmed. We also grant counsel's motion to withdraw.
