

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-1245

United States of America,

Appellee,

v.

Rosalio Rios-Melendres,

Appellant.

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[UNPUBLISHED]

Submitted: December 16, 2003

Filed: February 3, 2004

Before WOLLMAN, JOHN R. GIBSON, and RILEY, Circuit Judges.

PER CURIAM.

Rosalio Rios-Melendres pleaded guilty to conspiracy to distribute 500 grams or more of methamphetamine. He was sentenced to 121 months of imprisonment. He now appeals, arguing that the district court¹ erred in failing to grant his request for a downward departure to 108 months of imprisonment. We affirm.

¹The Honorable Donald E. O'Brien, United States District Judge for the Northern District of Iowa.

Rios-Melendres was convicted of a crime that requires the imposition of a mandatory minimum sentence of 120 months. 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. The district court may impose a sentence below the mandatory minimum in two circumstances: where the government makes a substantial assistance motion under 18 U.S.C. § 3553(e) or where the defendant is eligible for safety-valve treatment under 18 U.S.C. § 3553(f). The government did not make a motion for a downward departure, and Rios-Melendres was not eligible for safety-valve treatment because he had four criminal history points, yielding a category III,² and because he did not disclose all relevant information to the government. So, the district court could not have imposed a sentence below the statutory mandatory minimum of 120 months.

Although it could have departed downward to a sentence of 120 months, the district court denied as not justified by the facts Rios-Melendres' motion for a downward departure under U.S.S.G. § 5K2.0 based upon his family circumstances. Such a decision is not subject to review. United States v. VanHouten, 307 F.3d 693, 697 (8th Cir. 2002).

The sentence is affirmed.

²Although the district court granted his unopposed motion to reduce his criminal history category to I, Rios-Melendres still did not qualify for safety-valve treatment. United States v. Webb, 218 F.3d 877, 881-82 (8th Cir. 2000).