

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-2806

United States of America,

Appellee,

v.

Henry James Winsley,

Appellant.

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[UNPUBLISHED]

Submitted: February 6, 2004

Filed: February 26, 2004

Before MELLOY, HANSEN, and COLLOTON, Circuit Judges.

PER CURIAM.

Henry Winsley pleaded guilty to making a false statement in connection with his purchase of a firearm, in violation of 18 U.S.C. § 922(a)(6). The district court¹ declined to depart downward from the presumptively correct punishment range determined by the Sentencing Guidelines, and sentenced Winsley to 30 months in prison and 2 years supervised release. For reversal, Winsley argues that the district court incorrectly concluded it had no authority to depart downward.

¹The Honorable Laurie Smith Camp, United States District Judge for the District of Nebraska.

After carefully reviewing the record, including the various comments made by the district court during the sentencing hearing, we conclude that the district court was fully aware of its authority to depart downward and simply declined to do so. See United States v. VanHouten, 307 F.3d 693, 697 (8th Cir. 2002) (district court’s statement that it lacked power to depart “in a case like this” was acknowledgment that departure was not justified by facts of case, not expression of mistaken belief that it lacked authority to depart); United States v. Knight, 96 F.3d 307, 311 (8th Cir. 1996) (reviewing district court’s comments as whole to determine whether court understood it could depart). Thus, we find that the district court’s discretionary decision not to depart downward is unreviewable. See United States v. Rhone, 311 F.3d 893, 894 (8th Cir. 2002), cert. denied, 123 S. Ct. 2120 (2003).

Accordingly, we dismiss the appeal for lack of jurisdiction.
