

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 03-3400

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United States of America,

Appellee,

v.

John A. Hamilton, Jr.,

Appellant.

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

[UNPUBLISHED]

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Submitted: May 25, 2004

Filed: June 3, 2004

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Before MORRIS SHEPPARD ARNOLD, FAGG, and SMITH, Circuit Judges.

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PER CURIAM.

John A. Hamilton, Jr., pleaded guilty to possessing with intent to distribute 50 grams or more of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1); knowingly possessing a firearm in relation to drug trafficking, in violation of 18 U.S.C. § 924(c); and a related forfeiture charge. The district court<sup>1</sup> sentenced him to consecutive prison terms of 202 months and 60 months, plus 5 years supervised release. On appeal, Mr. Hamilton's counsel

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

has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967).

We conclude the issues raised by counsel are unreviewable. Mr. Hamilton was sentenced within the applicable statutory range and at the bottom of the Guidelines range applied to him as a career offender, *cf.* United States v. Woodrum, 959 F.2d 100, 101 (8th Cir. 1992) (per curiam) (where defendant did not argue sentence was imposed in violation of law or as result of incorrect application of Guideline, sentence within properly calculated Guidelines range was not reviewable); and the district court explicitly recognized its authority to depart from the Guidelines when it decided not to grant Mr. Hamilton's downward-departure motion, *see* United States v. Koons, 300 F.3d 985, 993-94 (8th Cir. 2002) (where district court recognized authority to depart but elected not to do so under circumstances, decision is unreviewable).

Finally, we have carefully reviewed the record independently pursuant to Penson v. Ohio, 488 U.S. 75 (1988), and we find no nonfrivolous issues. Accordingly, we affirm. We also grant counsel's motion to withdraw.

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