

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

No. 05-2382

United States of America,

Appellee,

v.

Orin Fredrick Johnson,

Appellant.

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

[UNPUBLISHED]

Submitted: August 7, 2006
Filed: August 14, 2006

Before RILEY, COLLOTON, and GRUENDER, Circuit Judges.

PER CURIAM.

Orin Johnson appeals the 46-month prison sentence the district court¹ imposed after he pleaded guilty to one count of conspiring to distribute and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. § 846. His counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the district court erred in finding that Johnson's post-arrest rehabilitation was not sufficiently extraordinary to warrant a downward departure.

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

While atypical post-offense rehabilitation can by itself be the basis for a discretionary departure under U.S.S.G. § 5K2.0, see United States v. Chapman, 356 F.3d 843, 849 (8th Cir. 2004), the denial of such a motion is unreviewable where the district court recognized its authority to depart downward and declined to do so, see United States v. Vasquez, 433 F.3d 666, 670 (8th Cir. 2006).

Having reviewed the record under Penson v. Ohio, 488 U.S. 75, 80 (1988), we conclude there are no nonfrivolous issues. Accordingly, we affirm the district court's judgment, and we grant counsel leave to withdraw.
