

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

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No. 08-1382

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United States of America,

Appellee,

v.

Luis Trujillo-Mendez,

Appellant.

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

[UNPUBLISHED]

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Submitted: October 1, 2009

Filed: October 6, 2009

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Before WOLLMAN, RILEY, and SMITH, Circuit Judges.

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PER CURIAM.

Luis Trujillo-Mendez appeals the sentence the district court<sup>1</sup> imposed after he pleaded guilty to illegal re-entry, in violation of 8 U.S.C. § 1326(a), (b). His counsel has moved to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the court abused its discretion in denying a downward departure under U.S.S.G. § 5K2.0. Because the district court acknowledged its authority to depart, and nothing in the record indicates that the refusal to do so was based upon an unconstitutional motive, the denial of Trujillo-Mendez's motion for a downward

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<sup>1</sup>The Honorable Mark W. Bennett, United States District Judge for the Northern District of Iowa.

departure is unreviewable. See United States v. Morell, 429 F.3d 1161, 1164 (8th Cir. 2005). We also conclude that Trujillo-Mendez's sentence is not unreasonable. See United States v. Radtke, 415 F.3d 826, 845-46 (8th Cir. 2005).

We have independently reviewed the record under Penson v. Ohio, 488 U.S. 75, 80 (1988), and have found no nonfrivolous issues. Accordingly, we grant counsel's motion to withdraw, and we affirm.

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