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No. 96-1948

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United States of America,

Appellee,

v.

Cody Donald Fitzwater,

Appellant.

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Appeal from the United States  
District Court for the  
Western District of Arkansas.

[UNPUBLISHED]

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Submitted: July 19, 1996

Filed: August 6, 1996

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Before BOWMAN, MAGILL, and LOKEN, Circuit Judges.

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PER CURIAM.

Cody Fitzwater pleaded guilty to knowingly and intentionally manufacturing marijuana, in violation of 21 U.S.C. § 841(a)(1). At sentencing, the district court<sup>1</sup> denied Fitzwater's motion for a downward departure under U.S.S.G. §§ 5K2.0 or 5K2.11, p.s., and sentenced him to five months imprisonment followed by two years supervised release, the first five months of which are to be served in home confinement. Fitzwater appeals.

The district court's statements at sentencing clearly indicate that it did not find departure warranted by the facts of this case. Thus, its refusal to depart was an unreviewable exercise of

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<sup>1</sup>The Honorable H. Franklin Waters, Chief Judge, United States District Court for the Western District of Arkansas.

discretion. See United States v. Rawe, 21 F.3d 850, 852 (8th Cir. 1994)  
(per curiam). Accordingly, we affirm.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.