

United States Court of Appeals  
FOR THE EIGHTH CIRCUIT

---

No. 97-1553

---

United States of America,

Appellee,

v.

John Gregory Lambros,

Appellant.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

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[UNPUBLISHED]

---

Submitted: August 7, 1997

Filed: September 2, 1997

---

Before WOLLMAN, LOKEN, and HANSEN, Circuit Judges.

---

PER CURIAM.

The court previously vacated a life-imprisonment sentence imposed on John Gregory Lambros following his conviction for conspiring to possess with intent to distribute and to distribute more than five kilograms of cocaine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A), and § 846. See United States v. Lambros, 65 F.3d 698 (8th Cir. 1995), cert. denied, 116 S. Ct. 796 (1996). On resentencing, Lambros moved for a downward departure from the applicable Guidelines range, arguing that his affliction with Hepatitis C has increased the chances of his contracting liver cancer or

cirrhosis of the liver. The district court<sup>1</sup> denied Lambros's motion and sentenced him to 360 months' imprisonment and eight years' supervised release. This appeal followed, in which Lambros challenges the denial of his motion.

Based upon our review of the record, including the court's statement that it found "no reason to depart" from the applicable Guidelines, we conclude that the court was aware of its authority to depart downward under U.S. Sentencing Guidelines Manual § 5H1.4, p.s. (1995) and made a discretionary decision not to do so; thus, the denial of Lambros's motion is unreviewable on appeal. See United States v. Fischl, 16 F.3d 927, 929 (8th Cir. 1994).

The judgment is affirmed.

A true copy.

Attest:

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

---

<sup>1</sup>The Honorable Robert G. Renner, United States District Judge for the District of Minnesota.