

United States Court of Appeals  
FOR THE EIGHTH CIRCUIT

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No. 97-2319

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United States of America,

Appellee,

v.

Jewell Leroy Chatman,

Appellant.

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

[UNPUBLISHED]

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Submitted: November 19, 1997

Filed: December 2, 1997

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Before McMILLIAN, BEAM, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

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PER CURIAM.

Jewell Leroy Chatman pleaded guilty to robbing a federally-insured Minneapolis, Minnesota bank, in violation of 18 U.S.C. § 2113(a). Based on a total offense level of 22 and a Category IV criminal history, the presentence report (PSR) recommended a Guidelines imprisonment range of 63 to 78 months. Chatman sought a downward departure from this Guidelines range pursuant to U.S. Sentencing Guidelines Manual § 4A1.3, p.s. (1995), arguing that Category IV overstated his criminal history and

Category II would be more appropriate. The district court<sup>1</sup> refused to depart downward. Noting that, in addition to the five countable convictions underlying his criminal history score, Chatman had been charged with criminal conduct in five other instances, the district court concluded Category IV overstated neither the seriousness of the defendant's criminal history nor his likelihood of recidivism. The court, however, granted the government's motion for downward departure pursuant to U.S. Sentencing Guidelines Manual § 5K1.1, p.s. (1995), and sentenced Chatman to 46 months imprisonment and three years supervised release. Chatman appeals, and we affirm.

We conclude that, because the district court was aware of its authority to depart, Chatman's sentence is unreviewable. See United States v. Hall, 7 F.3d 1394, 1396 (8th Cir. 1993).

Accordingly, we affirm.

A true copy.

Attest:

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

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<sup>1</sup>The Honorable David S. Doty, United States District Judge for the District of Minnesota.