

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-3584

United States of America,

Appellee,

v.

Robert Norman, also known as Bubba,

Appellant.

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

[UNPUBLISHED]

Submitted: July 24, 1998

Filed: August 5, 1998

Before BOWMAN, Chief Judge, BRIGHT, and MURPHY, Circuit Judges.

PER CURIAM.

Robert Norman pleaded guilty to conspiring to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846 (1994). Although Norman was initially granted release pending sentencing, the magistrate judge¹ later revoked release after finding that Norman had violated various release conditions. At sentencing, the District

¹The Honorable Thomas D. Thalken, United States Magistrate Judge for the District of Nebraska.

Court² determined Norman had a Guidelines imprisonment range of 57 to 71 months, and the government moved for a downward departure pursuant to 18 U.S.C. § 3553(e) (1994) and U.S. Sentencing Guidelines Manual § 5K1.1, p.s. (1995) based on Norman's substantial assistance, recommending a sentence "somewhere around a three year range." The Court granted the government's motion, but sentenced Norman to 48 months imprisonment and five years supervised release because of his pretrial release conduct. On appeal, counsel moved to withdraw and filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), arguing that the extent of the departure was insufficient, given the government's sentencing recommendation. We affirm.

Because counsel is merely objecting to the extent of the District Court's downward departure, this challenge is unreviewable. See United States v. Goodwin, 72 F.3d 88, 89, 91 (8th Cir. 1995) (extent of district court's downward departure under § 3553(e) and § 5K1.1 is unreviewable on appeal). Counsel also suggests that the Court improperly punished Norman by considering his pretrial release conduct in fashioning its sentence. This argument is merely a variation of counsel's unreviewable challenge to the extent of the departure, and we also note the District Court stated at sentencing that Norman would be given credit for the time he was incarcerated pending sentencing.

We have reviewed the record in accordance with Penson v. Ohio, 488 U.S. 75, 80 (1988), for any nonfrivolous issues for appeal, and have found none.

Accordingly, we affirm the judgment of the District Court. Counsel's motion to withdraw is hereby granted.

²The Honorable Lyle E. Strom, United States District Judge for the District of Nebraska.

A true copy.

Attest:

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