

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

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No. 98-2269

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United States of America,

Appellee,

v.

Kory Lowell Pierson,

Appellant.

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

[UNPUBLISHED]

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Submitted: December 7, 1998

Filed: December 14, 1998

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

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PER CURIAM.

Kory Lowell Pierson pleaded guilty to conspiring to manufacture and distribute methamphetamine, in violation of 21 U.S.C. § 846. Granting Mr. Pierson a downward departure for substantial assistance, and rejecting his request for a downward departure based on drug and alcohol addiction, the district court<sup>1</sup> sentenced Mr. Pierson to 90 months imprisonment and five years supervised release. This appeal followed. After appellate counsel moved to withdraw pursuant to Anders v. California, 386 U.S. 738

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<sup>1</sup>The Honorable Harold D. Vietor, United States District Judge for the Southern District of Iowa.

(1967), we granted Mr. Pierson permission to file a pro se supplemental brief, but he has not done so.

In his Anders brief, counsel argues that the district court erred in refusing to grant the additional downward departure based on Mr. Pierson's addiction, which the defense claimed had caused him to commit crimes representing most of his criminal history points. Even assuming the district court had authority to grant a downward departure on this basis, we conclude the court's refusal to depart was a discretionary decision which is unreviewable on appeal. See United States v. Darden, 70 F.3d 1507, 1549 (8th Cir. 1995), cert. denied, 517 U.S. 1149, and cert. denied, 518 U.S. 1026 (1996).

Counsel also argues that the district court erred in refusing to grant a greater downward departure for Mr. Pierson's substantial assistance, but the extent of such a departure is likewise unreviewable. See United States v. McCarthy, 97 F.3d 1562, 1577 (8th Cir. 1996), cert. denied, 117 S. Ct. 1011, and cert. denied, 117 S. Ct. 1284 (1997).

Upon review of the record in accordance with Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues.

Accordingly, the judgment of the district court is affirmed.

A true copy.

Attest:

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