

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

No. 99-2318

United States of America,

Appellee,

v.

Thomas A. Birkel,

Appellant.

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* Appeal from the United States
* District Court for the
* District of Nebraska.
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* **[UNPUBLISHED]**
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Submitted: November 2, 1999

Filed: November 4, 1999

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

PER CURIAM.

Thomas A. Birkel pleaded guilty to one count of bank robbery, in violation of 18 U.S.C. § 2113(a). He moved for a downward departure under 18 U.S.C. § 3553(b) and U.S. Sentencing Guidelines Manual § 5K2.0, but the district court¹ denied his motion and sentenced him to 57 months imprisonment and 3 years supervised release. On appeal, Birkel argues that the court erred in declining to depart downward.

¹The HONORABLE RICHARD G. KOPF, United States District Judge for the District of Nebraska.

The record demonstrates, and Birkel concedes, that the district court was aware of its authority to depart from the Guidelines, and declined to do so. Thus, the issue is unreviewable. See United States v. Turechek, 138 F.3d 1226, 1228 (8th Cir. 1998) (district court's discretionary decision not to depart downward from Guidelines is unreviewable so long as court was aware of its authority to do so).

Accordingly, we affirm the judgment of the district court.

A true copy.

Attest:

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