

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
vs.	)	No. 90-2048
	)	
BRUCE C. FOX,	)	
	)	
Defendant-Appellant.	)	

ORDER

Filed August 29, 1991

Before HOLLOWAY, Chief Judge, EBEL, Circuit Judge, NOTTINGHAM*,
District Judge.

*Honorable Edward W. Nottingham, United States District Judge for
the District of Colorado, sitting by designation.

Defendant appealed the district court's sentence following a guilty plea. By opinion filed April 18, 1991, this court affirmed defendant's sentence in part but remanded the cause to the district court to clarify the reason for its refusal to depart downward from the Guidelines. The court now has for consideration the district court's clarification dated August 13, 1991.

In view of the district court's statement that it exercised discretion in denying a downward department, despite the Guideline authority for such departure, this court lacks

jurisdiction to review that discretionary decision. See U.S. v. Soto, 918 F.2d 882, 883-84 (10th Cir. 1990).

Therefore, in accordance with the court's April 18, 1991, opinion and this order, the court affirms the sentence imposed by the district court.

Entered for the court



ROBERT L. HOECKER
Clerk