

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-3807

United States of America,

Appellee,

v.

Gustavo Lopez-Tapia,

Appellant.

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

[UNPUBLISHED]

Submitted: October 7, 2004

Filed: November 12, 2004

Before WOLLMAN, McMILLIAN and RILEY, Circuit Judges.

PER CURIAM.

Gustavo Lopez-Tapia appeals from the final judgment entered in the District Court¹ for the District of Nebraska upon his plea of guilty to conspiring to distribute and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. § 846 and 18 U.S.C. § 2. The district court sentenced appellant to 240 months imprisonment and 10 years supervised release. For reversal, counsel for appellant argues the district court abused its discretion in denying a motion for downward departure based on family hardship. Appellant has moved pro se to file a

¹The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

supplemental brief based on Blakely v. Washington, 124 S. Ct. 2531 (2004). For the reasons discussed below, we affirm the judgment of the district court.

After carefully reviewing the record, and in particular the written and oral remarks of the district court, we conclude that the court was fully aware of its authority to depart downward but declined to do so based on the facts of this case. Thus, we hold that the district court made a discretionary decision not to depart downward, which is unreviewable. See United States v. Waltermán, 343 F.3d 938, 942 (8th Cir. 2003).

Given that appellant received the statutory minimum sentence, see 21 U.S.C. § 841(b)(1)(A), with no enhancements based on judicially found facts, we conclude that supplemental briefing based on Blakely is unnecessary.

Accordingly, we deny the pending motion, and we affirm the judgment of the district court.
