

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-3146

United States of America,

Appellee,

v.

Gregory Webster,

Appellant.

*
*
*
*
*
*
*
*

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

[UNPUBLISHED]

Submitted: September 7, 2006
Filed: September 22, 2006

Before SMITH, MAGILL, and BENTON, Circuit Judges.

PER CURIAM.

Gregory Webster appeals the 252-month sentence the district court¹ imposed after granting the government's Federal Rule of Criminal Procedure 35(b) motion to reduce Webster's sentence for his post-sentencing substantial assistance. In a brief filed under *Anders v. California*, 386 U.S. 738 (1967), counsel argues that Webster's sentence is excessive and unreasonable. Counsel's argument is unavailing. See *United States v. Coppedge*, 135 F.3d 598, 599 (8th Cir. 1998) (per curiam) (challenge to extent of district court's departure upon government's Rule 35(b) motion is

¹The Honorable Laurie Smith Camp, United States District Judge for the District of Nebraska.

unreviewable because appeal was not based on any criteria listed in 18 U.S.C. § 3742(a)); *cf. United States v. Noe*, 411 F.3d 878, 885 (8th Cir.) (extent of downward departure is not reviewable), *cert. denied*, 126 S. Ct. 184 (2005); *United States v. Williams*, 324 F.3d 1049, 1050 (8th Cir. 2003) (per curiam) (refusal to depart is not reviewable unless defendant makes substantial showing that court's decision was based on unconstitutional motive).

Having reviewed the record independently under *Penson v. Ohio*, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues. Accordingly, we deny Webster's motion for appointment of counsel, and we affirm.
