

United States Court of Appeals  
For the Eighth Circuit

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No. 15-1272

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United States of America

*Plaintiff - Appellee*

v.

David Allen Kress

*Defendant - Appellant*

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Appeal from United States District Court  
for the Northern District of Iowa - Dubuque

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Submitted: August 3, 2015

Filed: August 6, 2015

[Unpublished]

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Before WOLLMAN, SMITH, and BENTON, Circuit Judges.

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PER CURIAM.

David Kress appeals after the district court<sup>1</sup> denied him a sentence reduction under 18 U.S.C. § 3582(c)(2). In 2005, Kress pleaded guilty to manufacturing and

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<sup>1</sup>The Honorable Linda R. Reade, Chief Judge, United States District Court for the Northern District of Iowa.

attempting to manufacture more than 5 grams of methamphetamine. In a written, nonbinding plea agreement, the parties stipulated that an upward departure under U.S.S.G. § 4A1.3 was warranted, and that a 180-month sentence was appropriate. The district court departed from the then-applicable range of 120-121 months, and sentenced Kress to 180 months in prison. In December 2014, the district court sua sponte considered and declined to reduce his sentence under Amendment 782 (effective November 1, 2014), finding that a reduction was not authorized, and in the alternative, that even if authorized, a reduction was not warranted. On appeal, Kress argues that the district court was authorized to reduce his sentence notwithstanding the parties' agreement and the upward departure, and erred by failing to do so.

We conclude there is no basis for reversal, as the district court's alternative finding--that a reduction was not warranted even if authorized--was not an abuse of discretion. See United States v. Long, 757 F.3d 762, 763 (8th Cir. 2014) (de novo review of whether § 3582(c)(2) authorizes modification, and abuse-of-discretion review of decision whether to grant authorized § 3582(c)(2) modification). The judgment is affirmed, and counsel's motion to withdraw is granted.

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