

United States Court of Appeals  
For the Eighth Circuit

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No. 17-2225

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United States of America

*Plaintiff - Appellee*

v.

Julius Malik Heard

*Defendant - Appellant*

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Appeal from United States District Court  
for the District of Minnesota - St. Paul

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Submitted: April 13, 2018

Filed: June 28, 2018

[Unpublished]

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Before SMITH, Chief Judge, WOLLMAN and LOKEN, Circuit Judges.

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PER CURIAM.

Julius Heard appeals his 71-month sentence imposed by the district court<sup>1</sup> after he pleaded guilty to being a felon in possession of a firearm, arguing that the district

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<sup>1</sup>The Honorable Michael J. Davis, United States District Judge for the District of Minnesota.

court erred in denying a downward departure based on overstatement of Heard's criminal history.

Having reviewed the record, we conclude that we lack authority to review the district court's denial of a downward departure under U.S.S.G. § 4A1.3(b)(1) because the district court was aware of its authority to depart, and Heard does not contend that the district court had any unconstitutional motive. *See United States v. Johnson*, 517 F.3d 1020, 1023 (8th Cir. 2008) ("We will generally not review a decision not to grant a downward departure unless the district court had an unconstitutional motive or erroneously thought that it was without authority to grant the departure.").

Accordingly, we affirm the judgment of the district court.

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