

United States Court of Appeals
For the Eighth Circuit

No. 20-1416

United States of America

Plaintiff - Appellee

v.

Jon Barry Moore

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: January 11, 2021

Filed: February 9, 2021

[Unpublished]

Before GRUENDER, BENTON, and STRAS, Circuit Judges.

PER CURIAM.

Jon Barry Moore pled guilty to possession with intent to distribute 50 grams or more of a mixture and substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B). The district

court¹ sentenced him to 151 months in prison. He appeals. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

Moore contends his within-guidelines sentence is substantively unreasonable. He argues the court should have varied downward based on a policy disagreement with U.S.S.G. § 2D1.1(c), which he believes creates an arbitrary distinction between “actual” pure meth and “less pure” meth. This court reviews for abuse of discretion. *United States v. Sharkey*, 895 F.3d 1077, 1080 (8th Cir. 2018).

The district court may vary from the meth guidelines based on a policy disagreement, but nothing mandates it do so. *See id.* at 1082. *See also United States v. Binion*, 801 Fed. Appx. 459, 462 (8th Cir. 2020) (“[W]hile the district court could have granted a downward variance based on a disagreement with the Guidelines’ treatment of methamphetamine purity . . . it had the discretion to decline to do so.”), *citing Kimbrough v. United States*, 552 U.S. 85, 110 (2007). As required, the district court considered Moore’s argument before rejecting it, noting that “if anything, the amount of methamphetamine attributed to the defendant, pure or otherwise, is likely an underestimation of the amount of methamphetamine the defendant was involved with.” The district court did not abuse its discretion by rejecting Moore’s request to vary downward. *See id.*

* * * * *

The judgment is affirmed.

¹The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.