

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

\_\_\_\_\_  
No. 02-2825  
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United States of America,

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Appellee,

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Appeal from the United States  
District Court for the Southern  
District of Iowa.

\*

v.

\*

\*

Mario Antonio Ortega-Ibarra,

\*

[UNPUBLISHED]

\*

Appellant.

\*

\_\_\_\_\_  
Submitted: December 3, 2002

Filed: December 16, 2002  
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Before LOKEN, FAGG, and MURPHY, Circuit Judges.  
\_\_\_\_\_

PER CURIAM.

Mario Antonio Ortega-Ibarra pleaded guilty to reentering the United States illegally after having been convicted of an aggravated felony and deported, in violation of 8 U.S.C. § 1326(a) and (b)(2). At sentencing, the district court\* denied Ortega-Ibarra's motion for a downward departure based on cultural assimilation and sentenced him to 70 months imprisonment and three years supervised release.

\_\_\_\_\_  
\*The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

On appeal, Ortega-Ibarra's counsel has filed a brief and moved to withdraw under Anders v. California, 386 U.S. 738 (1967). Counsel contends the district court abused its discretion in denying the downward-departure motion. We conclude the ruling is unreviewable because the district court acknowledged it had discretion to depart. See United States v. Correa, 167 F.3d 414, 417 (8th Cir. 1999). On independent review of the record under Penon v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues. Accordingly, we affirm. We also grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.