

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

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No. 98-1167

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United States of America,

Appellee,

v.

Michael Wayne Mucker,

Appellant.

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Appeal from the United States  
District Court for the  
District of Minnesota.  
[UNPUBLISHED]

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Submitted: July 1, 1998

Filed: July 7, 1998

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Before BOWMAN, Chief Judge, WOLLMAN, and MORRIS SHEPPARD ARNOLD,  
Circuit Judges.

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PER CURIAM.

Michael Wayne Mucker appeals the sentence imposed after he pleaded guilty to possessing crack cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) (1994). We affirm.

Mucker entered into a written plea agreement whereby he agreed to cooperate by providing information and testimony concerning his and others' drug activities and the government agreed to move under 18 U.S.C. § 3553(e) (1994) for a substantial-

assistance departure below the five-year statutory minimum sentence. The agreement contemplated a Guidelines imprisonment range of 46 to 57 months. The district court<sup>1</sup> accepted Mucker's plea, granted the government's section 3553(e) motion, denied Mucker's request for a further departure under U.S. Sentencing Guidelines Manual § 5K1.1, p.s. (1997), and sentenced Mucker to 46 months' imprisonment and four years' supervised release.

Mucker attacks the government's refusal to make a section 5K1.1 departure motion. We agree with the government that Mucker has failed to make a substantial showing that the government's refusal to make such a motion was based upon an unconstitutional motive or that it was irrational. See Wade v. United States, 504 U.S. 181, 185-86 (1992); United States v. Lewis, 3 F.3d 252, 255 (8th Cir. 1993) (per curiam).

The judgment is affirmed.

A true copy.

Attest:

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

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<sup>1</sup>The Honorable Richard H. Kyle, United States District Judge for the District of Minnesota.