

United States Court of Appeals For the First Circuit

No. 01-2071

UNITED STATES OF AMERICA,
Appellee,

v.

DAVID J. OAKES,
Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MAINE

[Hon. Gene Carter, U.S. District Judge]

Before

Selya, Circuit Judge,

Gibson* and Greenberg,** Senior Circuit Judges.

Douglas J. Beaton for appellant.

F. Mark Terison, Senior Litigation Counsel, with whom Paula D. Silsby, United States Attorney, was on brief, for appellee.

October 4, 2002

*Of the Eighth Circuit, sitting by designation.

**Of the Third Circuit, sitting by designation.

Per Curiam. This sentencing appeal poses a legal question that is materially indistinguishable from that which we recently answered in United States v. Ahlers, Nos. 01-2570, 01-2571 (1st Cir. Sept. 30, 2002). Based on the holding in Ahlers, Oakes's suggested answer to that question must be rejected. Here, moreover, unlike in Ahlers, the district court affirmatively found that the facts did not support the departure request. Thus, even apart from Ahlers, the sentence in this case would be unreviewable. See United States v. Pierro, 32 F.3d 611, 619 (1st Cir. 1994); United States v. Hilton, 946 F.2d 955, 957 (1st Cir. 1991). For both of these reasons, Oakes's appeal fails.

Affirmed.