United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-3046

United States of America,	*	
	*	
Plaintiff-Appellee,	*	
	*	Appeal from the United States
v.	*	District Court for the
	*	District of South Dakota.
Wayne Hobart Big Crow,	*	
	*	[UNPUBLISHED]
Defendant-Appellant.	*	

Submitted: March 13, 2001

Filed: April 6, 2001

Before MURPHY, LAY, and BYE, Circuit Judges.

PER CURIAM.

The defendant, Wayne Hobart Big Crow ("Big Crow"), was charged in a two-count Indictment with involuntary manslaughter and assault resulting in serious bodily injury. The Indictment was the result of an accident Big Crow caused while speeding and driving drunk. The driver of the other vehicle, a fifteen-year-old girl, was killed, and the passenger, a four-year-old girl, was left paralyzed, unable to move from the chin down.

Big Crow entered into a plea agreement with the Government whereby he would plead guilty to the charge of assault resulting in serious bodily injury in exchange for the Government dismissing the involuntary manslaughter charge and recommending a three-level downward adjustment for acceptance of responsibility. At the sentencing hearing, the district court[1] granted Big Crow the three-level downward adjustment. However, the court departed upward based upon death, physical injury, adequacy of criminal history category, and extreme psychological injury.

On appeal, Big Crow argues that the district court erred in departing upward from the sentencing guidelines.[2] Big Crow believes he deserved a lesser sentence based on his plea of guilty. According to Big Crow, there was no incentive to plead guilty when the result was no different than if his case had gone before a jury.

This court reviews sentencing departures under an abuse of discretion standard. See United States v. Washington, 109 F.3d 459 (8th Cir. 1997). Based on our review of the district court's Judgment, specifically its Statement of Reasons, we find no abuse of discretion. See 8th Cir. R. 47B.

JUDGMENT AFFIRMED.

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[1]The Honorable Charles B. Kornmann, United States District Judge for the District of South Dakota, presiding.

[2]In his brief, Big Crow also raised an argument that he did not receive the three-level downward departure for acceptance of responsibility. However, he now concedes that the three-level reduction was applied.

A true copy.

Attest:

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