

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

No. 00-2604

United States of America,

Appellee,

v.

Gerald Red Cloud,

Appellant.

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Appeal from the United States
District Court for the
District of South Dakota.

[UNPUBLISHED]

Submitted: May 3, 2001
Filed: May 7, 2001

Before BOWMAN, BEAM, and LOKEN, Circuit Judges.

PER CURIAM.

Gerald Red Cloud pleaded guilty to engaging in a sexual act with his minor daughter, in violation of 18 U.S.C. § 1153 and South Dakota law. At sentencing the district court¹ departed upward based on presentence report (PSR) statements--to which Red Cloud did not object--that he had sexually abused this daughter and two of his other daughters on several occasions. The court imposed a sentence of 121 months

¹The HONORABLE RICHARD H. BATTEY, United States District Judge for the District of South Dakota.

imprisonment and three years supervised release. Red Cloud now challenges the court's upward departure.

Having carefully reviewed the record, we conclude the district court did not abuse its discretion in departing upward in light of Red Cloud's repeated sexual abuse of three of his daughters. See U.S.S.G. § 2A3.1, comment. (n.4) (1998) (upward departure warranted if court determines defendant committed multiple acts of criminal sexual abuse of same or different victims); Koon v. United States, 518 U.S. 81, 100 (1996) (standard of review for upward departure); United States v. Beatty, 9 F.3d 686, 690 (8th Cir. 1993) (district court may accept as true all factual allegations in PSR not objected to by parties).

Accordingly, we affirm.

A true copy.

Attest:

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