

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-1387

United States of America,

Appellee,

v.

Jody Lee Johnson,

Appellant.

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

[UNPUBLISHED]

Submitted: September 12, 2001

Filed: October 12, 2001

Before MORRIS SHEPPARD ARNOLD and BRIGHT, Circuit Judges, and
BOGUE,¹ District Judge.

PER CURIAM.

This appeal presents a single issue, namely, whether the district court² erred in denying Jody Lee Johnson a reduction in his sentence for acceptance of responsibility. We conclude that it did not and therefore affirm the judgment.

¹The Honorable Andrew W. Bogue, United States District Judge for the District of South Dakota, sitting by designation.

²The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

Mr. Johnson pleaded guilty to the sexual exploitation of a minor in violation of 18 U.S.C. § 2251(a). His presentence report recommended that he not be given a downward adjustment for acceptance of responsibility because he continued to minimize his acts and describe them in a way that was both unbelievable and very self-serving. The district court denied the reduction based on the facts contained in the presentence report and also because it was not convinced of the sincerity of Mr. Johnson's apology for his acts. We review a decision not to make a downward adjustment for clear error, *see United States v. Goings*, 200 F.3d 539, 544 (8th Cir. 2000), and are mindful that the United States Sentencing Guidelines provide that in cases such as this "the determination of the sentencing judge is entitled to great deference on review," U.S.S.G. § 3E1.1, comment. (n.5).

Mr. Johnson does not deny any of the facts that furnished the basis for the recommendation against a downward adjustment contained in his presentence report. Rather, he maintains that he is entitled to such an adjustment because his denials and excuses were symptomatic of his illness (paraphilia) and thus it was error to equate them with a refusal on his part to accept responsibility. In the first place, Mr. Johnson did not make this argument in the district court, so he has forfeited it. *See United States v. Elliott*, 89 F.3d 1360, 1367 (8th Cir. 1996), *cert. denied*, 519 U.S. 1118 (1997). In the second place, there is nothing in the record from which the district court could have concluded that Mr. Johnson's denials were symptomatic of an illness; there is only evidence that people with Mr. Johnson's sexual tendencies typically minimize their behavior.

The judgment is therefore affirmed.

A true copy.

Attest:

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