
No. 96-1432

United States of America,

Appellee,

v.

Benjamin Joseph Palmier, Sr.,

Appellant.

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

* [UNPUBLISHED]
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Submitted: May 23, 1996

Filed: May 30, 1996

Before McMILLIAN, WOLLMAN, and MURPHY, Circuit Judges.

PER CURIAM.

Pursuant to a written plea agreement, Benjamin Joseph Palmier, Sr., pleaded guilty to aggravated sexual abuse, in violation of 18 U.S.C. §§ 1153 and 2241(a). In his written plea agreement, Palmier agreed to waive his right to appeal if the court accepted the plea agreement and sentenced him within the applicable Guidelines range, as set forth in the presentence report (PSR). After adopting the 188-to-235-month sentencing range recommended in the PSR, the district court¹ sentenced Palmier to 235 months imprisonment and three years supervised release, and ordered him to pay a total of \$7,267 in restitution. Palmier appeals, arguing that his sentence is unduly harsh. We affirm.

¹The Honorable Richard H. Battey, Chief Judge, United States District Court for the District of South Dakota.

A defendant who pleads guilty and expressly waives the statutory right to raise objections to a sentence may not appeal the sentence that was part of the agreement. United States v. Rutan, 956 F.2d 827, 829 (8th Cir. 1992). To be effective, the waiver must be the result of a knowing and voluntary decision to forego the right to appeal. Id. The transcript of Palmier's guilty-plea hearing shows that the district court asked Palmier whether he understood that he was relinquishing his appeal right, and Palmier responded that he did. Thus, we conclude Palmier knowingly and voluntarily waived his right to appeal his sentence.² See id. at 830.

Accordingly, the judgment is affirmed.

A true copy.

Attest:

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

²In any event, Palmier's appeal is meritless as the district court sentenced him within a Guidelines range Palmier did not challenge, and the court detailed its reasons for sentencing Palmier at the high end of the Guidelines range, in accordance with 18 U.S.C. § 3553(c)(1).