

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 96-3128

United States of America,

Appellee,

v.

Benny Council,

Appellant.

*
*
*
*
*
*
*
*

Appeal from the United States
District Court for the
District of Minnesota

[UNPUBLISHED]

Submitted: March 5, 1997

Filed: April 15, 1997

Before McMILLIAN, FAGG and LOKEN, Circuit Judges.

PER CURIAM.

Benny Council pleaded guilty to making false statements during the purchase of a firearm, in violation of 18 U.S.C. § 922(a)(6). The presentence report (PSR) recommended a Guidelines range of 33-41 months, including a four-level enhancement pursuant to U.S. Sentencing Guidelines Manual § 2K2.1(b)(5) (1995). The district court¹ adopted the PSR, but departed downward based on the

¹The Honorable John R. Tunheim, United States District Judge for the District of Minnesota.

government's motion under U.S. Sentencing Guidelines Manual § 5K1.1 (1995), sentencing Council to 15 months imprisonment.

On appeal, Council challenges the section 2K2.1(b)(5) enhancement and the government's support of the enhancement at the sentencing hearing, claiming such support constituted a breach of the plea agreement. Without application of the four-level section 2K2.1(b)(5) enhancement, Council's total offense level of 14 and his category III criminal history score would have yielded a Guidelines sentencing range of 21 to 27 months. Because Council's 15-month sentence represents a downward departure from that range, his sentence is unreviewable. See United States v. Baker, 64 F.3d 439, 441 (8th Cir. 1995); United States v. Wyatt, 26 F.3d 863, 864 (8th Cir. 1994) (per curiam).

Accordingly, we affirm.

A true copy.

Attest:

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