

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40185
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN O. KNOST, III,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:93-CR-50020-01
- - - - -
(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

John O. Knost, III, pleaded guilty to improperly reporting wages subject to withholding tax. As part of the plea agreement, the Government agreed not to object to a downward departure from the Sentencing Guidelines for health reasons. In the presentence report (PSR), the probation officer found that Knost's physical impairments did "not meet the `extraordinary physical impairment' test set forth in guideline 5H1.4. Further, to depart below a sentence of imprisonment, as intimated by guideline 5H1.4 might

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

serve to significantly depreciate the seriousness of the offense." Knost disputed this conclusion and requested that he be given probation or home detention because of his illness.

At sentencing, the district court judge indicated that he had read Knost's request for downward departure. The district court accepted the medical reports supporting the request as true, but concluded that the impairments listed there did not warrant a downward departure.

"This court will not review a district court's refusal to depart from the sentencing guidelines unless that refusal was in violation of the law." United States v. Guajardo, 950 F.2d 203, 208 (5th Cir. 1991), cert. denied, 112 S. Ct. 1773 (1992). We stated that "the issue is not whether we would have departed as such, but whether the district judge's statement reflects a reasoned, persuasive view of statutory and sentencing guidelines considerations." Id.

The statement of the district court, taken in the context of the PSR and Knost's objections, shows that the district court weighed Knost's physical conditions against the seriousness of his crime and sentenced him at the bottom of the appropriate guideline range. The refusal to grant a downward departure after such consideration, is not a violation of the law and is not subject to review. See Guajardo, 950 F.2d at 208-09.

AFFIRMED.