

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 18, 2007

Charles R. Fulbruge III
Clerk

No. 07-30401
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

KEITH RUSSART

Defendant-Appellant

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:04-CR-80-2

Before KING, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Keith Russart appeals his 48-month sentence imposed following his guilty plea conviction for use of a communication facility in committing and facilitating the commission of a felony. Russart argues that the district court abused its discretion in departing upward from the sentencing guidelines range based on U.S.S.G § 5K2.1 and unreasonably deviated upward from the sentencing guidelines range in imposing a non-guideline sentence.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

In light of Russart's reckless conduct resulting in the death of an individual and the fact that the applicable Guideline did not take the possibility of a death into account, the district court did not abuse its discretion in departing upward based on § 5K2.1. In departing up to the statutory maximum, the district court also properly gave consideration to factors that met the objectives of 18 U.S.C. § 3553(a), including Russart's need for educational and vocational training and alcohol and drug rehabilitation programs, his lack of serious criminal history, and his recent drug use. *United States v. Zuniga-Peralta*, 442 F.3d 345, 347 (5th Cir. 2006), cert. denied, 126 S. Ct. 2954 (2006).

Assuming that the district court could also make a non-guidelines upward deviation at sentencing, the district court properly considered the relevant § 3553(a) factors, as stated above, and did not give significant weight to irrelevant factors. The sentence imposed did not reflect a clear error in judgment or an abuse of discretion by the district court and was reasonable under the circumstance of the case. The sentence is AFFIRMED.