

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-2976

United States of America,	*	
	*	
Appellee,	*	Appeal from the United States
	*	District Court for the Eastern
v.	*	District of Arkansas.
	*	
Roosevelt Franklin, Jr.,	*	[UNPUBLISHED]
	*	
Appellant.	*	

Submitted: March 14, 2001

Filed: March 22, 2001

Before RICHARD S. ARNOLD and FAGG, Circuit Judges, and PERRY,* District Judge.

PER CURIAM.

Roosevelt Franklin, Jr., a former corrections officer, pleaded guilty to assaulting an inmate. Franklin later filed a motion for a downward departure from the applicable sentencing guidelines range, arguing his aberrant behavior and the minor degree of injury took his case outside the heartland of excessive force cases. See U.S.S.G. § 5K2.0 (permitting departure for mitigating circumstances of a kind, or to a degree, not

*The Honorable Catherine D. Perry, United States District Judge for the Eastern District of Missouri, sitting by designation.

adequately taken into consideration in formulating the guidelines). At sentencing, the district court** heard testimony from several witnesses and argument from both parties. The court noted it had reviewed Koon v. United States, 518 U.S. 81 (1996), and concluded, "considering the totality of the circumstances," "I just don't think [a departure is] justified by the evidence that I have heard," "even though . . . [the sentence is] harsh in your case." On appeal, Franklin argues the district court erroneously believed it lacked authority to depart from the guidelines range. We disagree. The district court's remarks make clear that it recognized its authority to depart, but did not believe the circumstances of Franklin's case justified departure. Thus, having no jurisdiction to review the district court's decision not to depart, see United States v. Shepard, 207 F.3d 455, 457 (8th Cir. 2000), we affirm the district court.

A true copy.

Attest:

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

**The Honorable James M. Moody, United States District Judge for the Eastern District of Arkansas.