

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Filed October 23, 1998

No. 98-3003

United States of America,

Appellee

v.

Walter Nathaniel Parker, Jr.,

Appellant

Appeal from the United States District Court

for the District of Columbia

(No. 97cr00293-01)

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Before: Silberman, Rogers and Garland, Circuit Judges.

JUDGMENT

The district court sentenced Appellant to 148 months imprisonment based on 10 convictions for narcotics-related offenses. Appellant requested the district court to depart

downward from the Sentencing Guidelines range because the United States Park Police used "excessive and reckless" force by deploying two SWAT teams to effectuate his arrest, in the course of which appellant sustained serious injuries. The district court concluded that it lacked authority to depart on the grounds sought by appellant.

On appeal, the government acknowledges that "[t]o the extent that [the district court] concluded that [it] had no authority to depart downward from the Sentencing Guidelines based upon reckless police conduct because there was no 'precedent' for a departure on that ground, we acknowledge that [the district court] erred as a matter of law." Appellee's Brief at 14. We see no reason to remand, however, because

departing downward on the basis of alleged reckless over-deployment of SWAT teams would be an abuse of discretion given that there is no evidence showing that SWAT personnel in any way caused appellant's injuries. See generally *Koon v. United States*, 518 U.S. 81, 98 (1996); *United States v. Fenner*, 147 F.3d 360, 363 (4th Cir. 1998) ("we need not remand to permit the district court to exercise its discretion to depart if its decision to do so on remand would constitute an abuse of discretion").

Accordingly, it is hereby ORDERED that the judgment of conviction is affirmed.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

FOR THE COURT:

Mark J.

Langer, Clerk