

Not For Publication in West's Federal Reporter
**United States Court of Appeals
For the First Circuit**

No. 10-1747

UNITED STATES OF AMERICA,

Appellee,

v.

PATRICK McKEEN,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW HAMPSHIRE

[Hon. Joseph A. DiClerico, Jr., U.S. District Judge]

Before

Torruella, Selya and Lipez,
Circuit Judges.

Mark E. Howard and Howard & Ruoff, PLLC on brief for appellant.

Seth R. Aframe, Assistant United States Attorney, and Michael J. Gunnison, Attorney (acting under authority conferred by 28 U.S.C. § 515), on brief for appellee.

May 11, 2011

Per Curiam. This is a single-issue sentencing appeal. Viewing the record as a whole, we conclude that the district court could supportably find – as it did – that the prosecutor's decision not to move for an additional reduction in the defendant's offense level for timely acceptance of responsibility, see USSG §3E1.1(b), was neither irrational nor motivated by an unconstitutional reason. The decision was, therefore, within the prosecutor's wide discretion, see, e.g., United States v. Beatty, 538 F.3d 8, 15 (1st Cir. 2008), and the district court did not err in refusing to compel the prosecutor to make such a motion.

We need go no further. On this basis, we summarily affirm the defendant's sentence. See 1st Cir. R. 27.0(c).

Affirmed.