

SEP 21 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSEPH MICHAEL SURE CHIEF,

Defendant - Appellant.

No. 11-30347

D.C. No. 4:11-cr-00021-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Joseph Michael Sure Chief appeals from the 90-month sentence imposed following his guilty-plea conviction for assault resulting in serious bodily injury, in violation of 18 U.S.C. §§ 1153 and 113(a)(6), and assault with a dangerous

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

weapon, in violation of 18 U.S.C. §§ 1153(a) and 113(a)(3). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Sure Chief contends that the district court committed procedural error when it stated that Sure Chief was referring to the victim when he said that somebody was going to die. The district court's statement was not clearly erroneous. *See United States v. Hinkson*, 585 F.3d 1247, 1261 (9th Cir. 2009) (en banc).

Sure Chief also contends that his sentence is substantively unreasonable because the district court gave undue weight to the victim's sentencing testimony and sentenced Sure Chief as though he had been convicted of attempted murder. The above-Guidelines sentence is substantively reasonable in light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.