

December 16, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40039
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

IKESKI DECKARD,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:99-CR-32-ALL

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Ikeski Deckard, federal prisoner No. 08146-078, appeals the district court's denial of his motion for reduction of sentence based on substantial assistance, purportedly filed pursuant to FED. R. CRIM. P. 35(b).

A motion for reduction of a defendant's sentence pursuant to Rule 35(b) must be filed by the Government. United States v. Early, 27 F.3d 140, 141 (5th Cir. 1994). The Government's refusal to move for a reduction of sentence is unreviewable by the district court absent a "substantial threshold showing" that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the decision is based on an unconstitutional motive. Wade v. United States, 504 U.S. 181, 185-86 (1992) (reviewing Government's refusal to file a motion pursuant to U.S.S.G. § 2K1.1). Deckard does not allege that the Government's decision not to file a Rule 35(b) motion in his case was based on an unconstitutional motive. Deckard's Rule 35(b) motion was thus "an unauthorized motion which the district court was without jurisdiction to entertain." Early, 27 F.3d at 142.

The judgment of the district court is AFFIRMED.