

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-31010  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS GERARD CASSANI,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 01-CR-24-ALL-F  
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May 22, 2002

Before DAVIS, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Thomas Gerard Cassani pleaded guilty without a plea agreement to possession of materials involving the sexual exploitation of minors. He argues that the district court erred in denying his motion for a downward departure based on diminished capacity due to its mistaken belief that it was not authorized to do so.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

This court has jurisdiction to hear this appeal if the refusal to depart was premised upon a mistaken conclusion that the guidelines do not permit such a departure, but we lack jurisdiction if the refusal was premised on a determination that a departure was not warranted under the facts of the case. United States v. Brace, 145 F.3d 247, 263 (5th Cir. 1998)(en banc). The district court denied the motion for a downward departure, noting that there was no medical opinion that Cassani's crimes had been caused by his mental problems. As the court did not misapprehend its authority under the Sentencing Guidelines, we lack jurisdiction to hear this appeal. Id. Accordingly, Cassani's appeal is DISMISSED.