

April 21, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-11179  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MONTOYA JORDAN,

Defendant-Appellant.

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Appeals from the United States District Court  
for the Northern District of Texas  
USDC No. 4:00-CR-117-6  
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Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

Montoya Jordan, federal prisoner # 25762-177, appeals the district court's denial of his motion to correct sentence pursuant to FED. R. CRIM. P. 35 and his motion for release pending the resolution of his FED. R. CRIM. P. 35 motion. He contends that the district court erred in denying his motions because the length of his incarceration and the amount of the restitution were based upon losses to victims which were not proven at trial.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

He further argues that his convictions were based upon insufficient evidence.

None of the conditions for granting relief under Rule 35 are present. See United States v. Early, 27 F.3d 140, 141-142 (5th Cir. 1994). Because the district court was without authorization to grant relief, the court's denial was not a gross abuse of discretion. See United States v. Sinclair, 1 F.3d 329 (5th Cir. 1993). The district court's denial of Jordan's motion to correct sentence pursuant to FED. R. CRIM. P. 35 and motion for release pending the determination of his FED. R. CRIM. P. 35 motion are affirmed.

AFFIRMED.