

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-51058  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DARRYL DEWAYNE FRAZIER,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-96-CR-109-1  
- - - - -

October 22, 1998

Before POLITZ, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:\*

Darryl Dewayne Frazier was convicted for possession with intent to distribute cocaine base and aiding and abetting and has appealed his sentence. Frazier contends that the district court improperly sentenced him as a "career offender" under U.S.S.G. § 4B1.1 on the basis of the instant conviction for aiding and abetting. Frazier's argument is foreclosed by the court's opinion in United States v. Lightbourn, 115 F.3d 291, 293 (5th Cir. 1997).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Frazier contends that his criminal history category of VI unfairly exaggerates the seriousness of his prior criminal conduct and that the district court abused its discretion in refusing to depart downward. Departures from the sentencing guidelines are discretionary, and a district court's decision not to depart downward from the applicable sentencing range is not reviewable unless the district court believed it lacked authority to depart or the failure to depart violated the law. See United States v. Burleson, 22 F.3d 93, 94-95 (5th Cir. 1994). Frazier does not contend that the failure to depart violated the law and the record does not reflect that the district court believed that it lacked authority to depart downward.

AFFIRMED.