

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-50859
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VICTOR J. BIEGANOWSKI, J.D.,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. EP-98-CR-959-2

August 23, 2001

Before KING, Chief Judge, and POLITZ and PARKER, Circuit Judges.

PER CURIAM:*

Victor J. Bieganowski pleaded guilty to an indictment charging him with conspiring to commit mail fraud. Bieganowski has appealed, arguing that the Government breached the plea bargain by refusing to move for a downward departure pursuant to U.S.S.G. § 5K1.1. Because the Government retained sole discretion, its refusal to move for a downward departure is reviewable for an unconstitutional motive only. See Wade v. United States, 504 U.S. 181, 185-86 (1992).

Bieganowski does not contend that the Government's refusal to move for a downward departure was based upon an

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

unconstitutional motive. Instead, Bieganowski argues that the record shows that the Government never intended to move for a downward departure and that its reasons for refusing to offer the motion were insubstantial. These issues are not reviewable.

See United States v. Urbani, 967 F.2d 106, 110 (5th Cir. 1992).

The judgment is AFFIRMED.