

FILED

September 1, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40601

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DALTON BABINEAUX,

Defendant-Appellee.

Appeal from the United States District Court for
the Eastern District of Texas
(USDC No. 1:99-CR-84-1)

Before REAVLEY, JONES and DENNIS, Circuit Judges.

REAVLEY, Circuit Judge:*

Dalton Babineaux appeals from his sentence for possession with intent to distribute crack cocaine in violation of 21 U.S.C. § 841 (a) (1). Babineaux argues that the district court erred in denying his motion for a downward departure based upon its mistaken assumption that it did not have the authority to grant a departure.

*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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 record does not show that the district court misunderstood the scope of its authority to depart downward. Therefore, this court does not have the jurisdiction to review the district court's decision to decline to grant a downward departure. See United States v. Buck, 324 F.3d 786, 798 (5th Cir. 2003).

APPEAL DISMISSED.