

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-41464  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARIO TREVINO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. C-99-CR-263-1  
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August 20, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:\*

Mario Trevino appeals his sentence following his guilty plea conviction of one count of possession of 6,704 grams of methamphetamine with intent to distribute. He argues that the district court abused its discretion when it refused to grant him a downward departure at sentencing based on the alleged low purity of the methamphetamine and based on his mistaken belief that the contraband he possessed was marijuana.

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 lacks jurisdiction to review a defendant's challenge to his sentence based on mere dissatisfaction with the court's refusal to grant a downward departure, unless the court's refusal was the result of a violation of law or a misapplication of the Guidelines. United States v. DiMarco, 46 F.3d 476, 477 (5th Cir. 1995). A refusal to depart is a violation of law if the court mistakenly believed that it lacked the authority to depart. United States v. Burleson, 22 F.3d 93, 95 (5th Cir. 1994).

The record does not show that the district court's refusal to grant his requested downward departures was based on a mistaken belief that it could not do so. Rather, the district court based its decision on its belief that the requested departures were not appropriate. Because the district court did not misapprehend its authority under the Sentencing Guidelines, we lack jurisdiction to hear this appeal. Id. Accordingly, Trevino's appeal is DISMISSED.