

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 02-10583
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO SALAZAR CAVAZOS,
also known as Paco UNKNOWN,

Defendant-

Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:98-CR-108-5

December 5, 2002

Before JONES, STEWART and DENNIS, Circuit Judges.

PER CURIAM:*

Francisco Salazar Cavazos, now federal prisoner # 80697-079, appeals the district court's denial of his FED. R. CRIM. P. 35(b) motion for reduction of sentence. The district court held that it lacked the authority to consider the motion because Rule 35(b) permits the Government to move for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a reduction in sentence based on substantial assistance but the Government had not filed such a motion.

Cavazos correctly notes that this court's precedent establishes that "the Government's failure to file [a Rule 35(b)] motion is not reviewable unless the defendant makes a 'substantial threshold showing' that the government's refusal is based upon unconstitutional motives," such as race or religion. United States v. Sneed, 63 F.3d 381, 388-89 n.6 (5th Cir. 1995); see Wade v. United States, 504 U.S. 181, 185-86 (1992). Cavazos argues that our interpretation of Wade is overly restrictive and incorrect. However, we are bound by our precedent absent an intervening Supreme Court decision or a subsequent en banc decision. See United States v. Short, 181 F.3d 620, 624 (5th Cir. 1999).

Cavazos argues that the Government's failure to move for a sentence reduction was not rationally related to any legitimate governmental interest and/or was in bad faith. He has not shown that he made this argument to the district court, and he has not made the substantial threshold showing necessary to establish an unconstitutional motive by the Government. See Sneed, 63 F.3d at 388-89 n.6; Wade, 504 U.S. at 186.

Cavazos has also filed a motion for the appointment of counsel. That motion is DENIED.

AFFIRMED. MOTION DENIED.