

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-40131  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRONDRICK MACK, also known as Boo,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:01-CR-31-10  
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October 30, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Brondrick Mack appeals his sentence arguing that the Government breached the plea agreement by failing to file a motion for downward departure pursuant to § 5K1.1 of the sentencing guidelines. Although Mack contends that the Government did not reserve its discretion to file a motion for sentence reduction when it entered into this agreement, a plain reading of the agreement shows that the Government retained the sole discretion to file a motion even if Mack cooperated. See

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

United States v. Garcia-Bonilla, 11 F.3d 45, 46 (5th Cir. 1993).

When the Government retains its discretion to file the motion for sentence reduction, "a defendant who provides substantial assistance without receiving a downward departure is not entitled `to a remedy or even to discovery or an evidentiary hearing' unless the prosecution relied on an unconstitutional motive" in refusing to file the motion. Id. at 46 (quoting Wade v. United States, 504 U.S. 181, 185 (1992)). Mack does not ascribe any unconstitutional motives to the Government. Accordingly, Mack's sentence is AFFIRMED.