

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 02-40342  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS JAMES ROACH,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:93-CR-114-1  
-----

February 19, 2003

Before WIENER, EMILIO M. GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Thomas James Roach, Federal prisoner number 04449-078, was convicted in 1994 for possession with intent to distribute cocaine and is serving a 150-month term of imprisonment. Roach has appealed the district court's order denying his motion under FED. R. CRIM. P. 35(b) for a downward departure.

Resentencing under FED. R. CRIM. P. 35(b) is permitted only on the Government's motion. See United States v. Early, 27 F.3d

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

140, 141 (5th Cir. 1994). Because Roach's motion was unauthorized, the district court did not have jurisdiction. See id. at 142. Although the district court considered the motion on its merits, it should have denied the motion for lack of jurisdiction. See id. On that alternative basis, the district court's order is

AFFIRMED.