

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

No. 02-60469
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES MATTHEWS,

Defendant-

Appellant.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:01-CR-160-ALL-P

November 11, 2002

Before JONES, STEWART and DENNIS, Circuit Judges.

PER CURIAM:*

James Matthews (“Matthews”) appeals the sentencing following his guilty plea for filing a false and fraudulent corporate tax return. Matthews argues that the district court abused its discretion in denying his motion for a downward departure. We lack jurisdiction to review a refusal to depart downward, unless the district court’s refusal was based on a mistaken belief that it lacked the authority to do so. See United States v. Cooper, 274 F.3d 230, 248 (5th Cir. 2001).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 indicates that the district court was aware that it had the authority to award a downward departure, but it did not believe that Matthews' case was an extraordinary one warranting such action. Therefore, we are without jurisdiction to review the determination. See United States v. DiMarco, 46 F.3d 476, 478 (5th Cir. 1995).

APPEAL DISMISSED.