

December 22, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-10530  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JASPER JEROME WILLIAMS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:98-CR-385-5-H

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Before GARWOOD, EMILIO M. GARZA and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Jasper Jerome Williams, federal prisoner # 32904-077, appeals the district court's denial of his postconviction motion requesting that the Government be made to file a motion for a downward departure of Williams's sentence based upon his substantial assistance. Williams states that he provided substantial assistance after the Government in April 2002 had filed and the

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 R. 47.5 the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court had granted a postconviction FED. R. CRIM. P. 35(a) motion for a downward departure and that the Government promised to file another Rule 35 motion.\* He seeks for this court to compel the Government to file a motion for a downward departure or to order the district court to conduct an evidentiary hearing.

The Government's failure to file a Rule 35 motion for a downward departure is discretionary and not reviewable unless the defendant makes a substantial threshold showing that the Government's refusal was based upon unconstitutional motives, such as the defendant's race or religion. *Wade v. United States*, 504 U.S. 181, 185-86 (1992); *United States v. Urbani*, 967 F.2d 106, 109 (5th Cir. 1992). See also *United States v. Sneed*, 63 F.3d 381, 388-89 n.6 (5th Cir. 1995). Williams has not made such a showing (nor indeed has he alleged any such motives).

AFFIRMED.

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\*The Government had also filed prior to Williams's May 7, 1999, sentencing a motion for downward departure under § 5K1.1 of the Sentencing Guidelines, based on Williams's substantial assistance, and at sentencing the district court granted that motion. Williams's plea agreement provided in part "[a] motion for downward departure from the applicable guidelines under U.S.S.G. § 5K1.1 will be filed by the Government *if, and only if*, in the sole discretion of the United States Attorney for the Northern District of Texas, it is determined that the Defendant had rendered substantial assistance to the Government in its investigation and prosecution of others." (emphasis added).