

March 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-10940
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KENT LAMARR BOOZE,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:03-CR-121-ALL-A

Before JOLLY, WIENER, and PICKERING, Circuit Judges.

PER CURIAM:*

Kent Lamarr Booze pleaded guilty to a one-count information that charged him with aiding and abetting the false representation of a Social Security number. Based on Booze's cooperation, the Government filed a motion for downward departure pursuant to U.S.S.G. § 5K1.1. The district court denied that motion.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Booze appeals the district court's refusal to grant the Government's § 5K1.1 motion for downward departure. We lack jurisdiction over the denial of a downward departure unless the district court mistakenly believed it lacked the authority to depart. United States v. Yanez-Huerta, 207 F.3d 746, 748 (5th Cir. 2000). The court in this case properly understood the scope of its authority but declined to exercise its discretion to depart. We therefore lack jurisdiction to review its decision. The Government's motion seeking leave to forego filing a brief in this case and its motion for dismissal of this appeal are GRANTED. See United States v. Landerman, 167 F.3d 895, 899-900 (5th Cir. 1999).

APPEAL DISMISSED.