

February 23, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40703
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TRENT ANTHONY GUIDRY,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:97-CR-3-2-RAS-WCR

Before BARKSDALE, GARZA, and STEWART, Circuit Judges.

PER CURIAM:*

Trent Anthony Guidry, federal prisoner No. 06487-078, appeals the district court's denial of his motion for reduction of sentence based on substantial assistance, purportedly filed pursuant to FED. R. CRIM. P. 35(b).

A motion for reduction of a defendant's sentence pursuant to Rule 35(b) must be filed by the Government. United States v. Early, 27 F.3d 140, 141 (5th Cir. 1994). The Government's refusal to move for a reduction of sentence is unreviewable by

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 district court absent a "substantial threshold showing" that the decision is based on an unconstitutional motive. Wade v. United States, 504 U.S. 181, 185-86 (1992) (reviewing Government's refusal to file a motion pursuant to U.S.S.G. § 2K1.1).

The district court granted a Rule 35(b) motion for reduction of sentence filed by the Government in this case. Guidry argues, however, that he is entitled to further relief under Rule 35(b) based on his additional assistance to the Government. Guidry does not allege that the Government's decision not to file a second Rule 35(b) motion was based on an unconstitutional motive. Guidry's pro se Rule 35(b) motion was thus "an unauthorized motion which the district court was without jurisdiction to entertain." Early, 27 F.3d at 142.

The judgment of the district court is AFFIRMED.