

December 30, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-60451
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DEBBIE STANPHILL

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:03-CR-62-ALL-M

Before KING, Chief Judge, and JONES and DENNIS, Circuit Judges.

PER CURIAM:*

Debbie Stanphill appeals the 36-month sentence imposed by the district court upon revocation of her probation. She argues that the district court erred in departing upward from the sentencing guideline range of three to nine months. See U.S.S.G. §§ 7B1.1(a)(3), 7B1.4(a).

Considering that Stanphill's sentence for the offense of conviction was the result of a downward departure, an upward departure was authorized. See U.S.S.G. § 7B1.4, comment. (n.4).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 appropriately considered Stanphill's need for drug treatment, and the 36-month sentence was well below the statutory maximum imprisonment term of 20 years. See 18 U.S.C. § 3553(a)(2)(D); 21 U.S.C. § 841(b)(1)(C); United States v. Pena, 125 F.3d 285, 286-87 (5th Cir. 1997). The sentence was therefore legal. See Pena, 125 F.3d at 288. The district court did not plainly err or abuse its discretion.

AFFIRMED.