

December 14, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20099
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JEFFREY BERNARD THEUS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CR-251-1

Before KING, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

Jeffrey Bernard Theus was convicted of conspiracy to commit interstate theft. He was sentenced to 44 months of imprisonment and a three-year term of supervised release. One of the conditions of Theus's supervised release requires him to cooperate in the probation officer's collection of a DNA sample.

In his sole issue on appeal, Theus challenges that condition of his supervised release. This court has previously held that such a challenge, made prior to the collection of any DNA sample

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

by the probation officer, is not ripe for review. United States v. Carmichael, 343 F.3d 756, 761-62 (5th Cir. 2003). Despite Theus's argument to the contrary, his case is not distinguishable in any material respect from Carmichael. See United States v. Riascos-Cuenu, ___ F.3d ___, No. 05-20037, 2005 WL 2660032 at *1-2 (5th Cir. Oct. 18, 2005). This appeal is dismissed for lack of jurisdiction.

APPEAL DISMISSED FOR LACK OF JURISDICTION.