

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

July 29, 2008

No. 07-31062
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

GREGORY SCOTT, also known as Wicha

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:06-CR-263-6

Before STEWART, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Gregory Scott appeals from his conviction of conspiracy to distribute and to possess with intent to distribute crack cocaine, cocaine, and marijuana. The Government moves to supplement the record with copies of Scott's sentencing memorandum and his objections to the presentence report, and to seal its motion and those documents. The Government's motions are GRANTED.

Scott contends that the district court erred because it believed it lacked the authority to depart downward to account for the time he spent in detention on

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a federal writ of habeas corpus ad prosequendum while serving his state sentence, although U.S.S.G. § 5G1.3, p.s., comment. (n.3(E)) gives district courts such authority.

We lack jurisdiction to review the denial of a downward departure request unless the district court held a mistaken belief that it lacked authority to depart. *United States v. Lucas*, 516 F.3d 316, 350 (5th Cir. 2008), petition for cert. filed (June 2, 2008) (No. 07-1512). A defendant is not entitled to credit against his newly imposed federal sentence for time spent serving an unrelated, undischarged sentence. See 18 U.S.C. § 3585(b). The district court stated the law correctly at Scott's sentencing hearing. Scott has not shown that the district court believed it lacked authority to depart. We lack jurisdiction over Scott's appeal. See *Lucas*, 516 F.3d at 350.

APPEAL DISMISSED.