

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-10313
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 5, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ASHLEY SIMPSON,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CR-213-1

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Ashley Simpson appeals the 262-month sentence imposed following her guilty plea conviction of conspiracy to possess with intent to distribute a controlled substance. She challenges the district court's denial of her motion for a downward departure and the application of the two-level enhancement pursuant to U.S.S.G. § 2D1.1(b)(5) for importation of methamphetamine. The

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Government has moved for summary affirmance in lieu of filing an appellate brief or, alternatively, an extension of time to file a brief.

We lack jurisdiction to review the denial of a downward departure unless the district court held the mistaken belief that it lacked the authority to depart. *United States v. Sam*, 467 F.3d 857, 861 (5th Cir. 2006). Here, the record does not reflect that the district court was unaware that it could depart; instead, the record supports that the court concluded that Simpson's motion for a downward departure should be denied because a sentence at the bottom of the guidelines range was appropriate. Thus, we lack jurisdiction to consider any argument challenging the district court's decision to deny Simpson's motion for a downward departure. *See Sam*, 467 F.3d at 861.

Simpson next asserts that the district court erred in applying the two-level enhancement under § 2D1.1(b)(5) on grounds that there was no proof that she knew the methamphetamine came from Mexico. However, she correctly concedes that her assertion is foreclosed by *United States v. Serfass*, 684 F.3d 548 (5th Cir. 2012), and seeks only to preserve it for further review.

Summary affirmance is not appropriate, and the Government's motion is DENIED. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The Government's alternative motion for an extension of time to file a brief is DENIED as unnecessary. The appeal is DISMISSED in part for lack of jurisdiction, and the judgment of the district court is AFFIRMED in part.