

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1603
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN WILLIAM BAY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:92-CR-013-D
- - - - -

March 17, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Bay's sole argument on appeal is that the district court abused its discretion by departing downward by only three levels. It is well-settled in this Circuit that Bay was not "entitled" to any downward departure at all; after a § 5K1.1 motion has been made, "application of downward departure is left to the discretion of the sentencing court." United States v. Damer, 910 F.2d 1239, 1241 (5th Cir.), cert. denied, 111 S.Ct. 535 (1990). Such application is reviewed only for an abuse of discretion.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Id. In Williams v. United States, ___ U.S. ___, 112 S.Ct. 1112, 1121, 117 L.Ed.2d 341 (1992), however, the Supreme Court stated that, "the decision to depart from the [guideline] range in certain circumstances" is "left solely to the sentencing court."

Bay cites no applicable authority to support his challenge to the extent of the downward departure granted by the district court. During the plea colloquy conducted by the district court, Bay was apprised of the fact that the Government was under no obligation to make a § 5K1.1 motion. In addition, the district court also made it clear that any departure decision was completely within that court's discretion. In short, absent any applicable authority, and in light of the discretion accorded to sentencing courts regarding their reaction to § 5K1.1 motions, there is no reviewable error presented by Bay on this appeal.

AFFIRMED.