

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8512  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE RICARDO RUIZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-92-CR-58-ALL

- - - - -  
August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Jose Ricardo Ruiz contends that Government acted in bad faith by not filing a motion for downward departure of his sentence pursuant to U.S.S.G. § 5K1.1. Ruiz's argument emphasizes his degree of cooperation, the risks he took to provide the Government substantial assistance, and the Government's "intentional frustration" of his efforts. Because the Government retained its discretion on the decision of whether to file the § 5K1.1 motion, the district court lacked the power

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\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

to grant relief unless the refusal to file the motion was based on some unconstitutional motive such as Ruiz's race or religion. United States v. Watson, 988 F.2d 544, 552 (5th Cir. 1993). Ruiz did not allege any unconstitutional motive before the district court, and he does not make that argument before this Court.

AFFIRMED.

On 22 July 1993, Ruiz filed an unopposed motion to seal the brief and record on appeal. The briefs and record were filed on or about 17 May 1993. Ruiz argues that his cooperation with the Government requires that the record and briefs be sealed for the safety of him and his family. The motion to seal is GRANTED.