

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2405
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS RICHARD STEPHENSON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-93-10
- - - - -
(January 6, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

This Court will not review a district court's refusal to depart from the guidelines unless the refusal is a violation of the law. United States v. Guajardo, 950 F.2d 203, 208 (5th Cir. 1991), cert. denied, 112 S.Ct. 1773 (1992). The district court's factual findings are reviewed for clear error, while its legal conclusions are reviewed *de novo*. United States v. Soliman, 954 F.2d 1013-1014 (5th Cir. 1992).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

At sentencing Thomas Richard Stephenson's attorney informed the court of Stephenson's serious medical condition. The district court considered that it could depart downward based on Stephenson's physical condition, but refused to do so, in part because it believed that the Bureau of Prisons has facilities which would accommodate Stephenson's medical needs. The district court stated that Stephenson's guidelines range was 30 to 37 months of imprisonment, but because of Stephenson's physical condition, the court would sentence Stephenson to the low end of the guidelines range. Consequently, the district court's discretionary refusal to downwardly depart was not a violation of law and is AFFIRMED. See Guajardo, 950 F.2d at 207-08.