

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8391
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OTIS DERRICK TAPLIN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-93-CR-23-1
- - - - -
(March 25, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Otis Derrick Taplin challenges the district court's refusal to depart downward under U.S.S.G. § 5K2.12 in imposing his sentence. He contends that he was under duress and coercion when he possessed a firearm and that the district court's finding that his testimony was not credible was clearly erroneous. He argues that, because his testimony was uncontradicted, the district court should have found that he was under serious coercion and duress and should have granted the downward departure.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

A refusal to depart from the guidelines is unreviewable unless the refusal was in violation of the law. United States v. Mitchell, 964 F.2d 454, 462 (5th Cir. 1992). The district court may depart downward if the defendant committed the offense due to coercion or duress. U.S.S.G. § 5K2.12, p.s.; see United States v. Vela, 927 F.2d 197, 200 (5th Cir.), cert. denied, 112 S.Ct. 214 (1991). "Ordinarily coercion will be sufficiently serious to warrant departure only when it involves a threat of physical injury, substantial damage to property or similar injury resulting from the unlawful action of a third party or from a natural emergency." Id.

Taplin testified at his sentencing hearing that he possessed a firearm for protection against four men who repeatedly attempted to harm him and his family. The district court found that Taplin was "simply not credible concerning all of the facts." Because Taplin challenges only the district court's credibility determinations and not the application of the sentencing guidelines, this Court will not review the district court's refusal to depart downward. See United States v. Carr, 979 F.2d 51, 54 (5th Cir. 1992).

AFFIRMED.