

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10839
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BASSAM FARESELRAB,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 93-CR-83-Y
- - - - -

June 27, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Fareselarab argues that the district court erred in denying him a hearing to review the Government's refusal to file a motion for downward departure because he provided substantial cooperation to the Government and because he made a threshold showing that the Government's refusal was based on an unconstitutional motive, his Lebanese heritage.

A district court may review the Government's refusal to make such a motion if it finds that the refusal was based on an

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

unconstitutional motive. Wade v. United States, 112 S. Ct. 1840, 1843 (1992). A defendant is entitled to an opportunity to conduct discovery and a hearing to review the issue of motive if he makes a substantial threshold showing that it was constitutionally improper, i.e. based on race or religion. Id. at 1844; United States v. Urbani, 967 F.2d 106, 109 (5th Cir. 1992).

In his brief, Fareselarab outlined facts relating to his assistance and alleged that evidence could be produced to prove racial bias. Fareselarab cited only the fact that the Government filed a motion for downward departure for his co-conspirator, "a white caucasian male," as basis for the racial-bias allegation. The Government offered legitimate reasons for its refusal to move for downward departure: Fareselarab was on probation as a result of a U.S.S.G. § 5K1.1, p.s., motion when he committed the offense, and unlike his coconspirator, Fareselarab did not proffer to the Government what his testimony against his coconspirator would be.

Fareselarab's contentions do not survive the framework established in Wade. Fareselarab did not make a threshold showing that the Government's decision to refuse to move for downward departure was based on his race.

AFFIRMED.