

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-31110
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALFRED D. LEWIS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 95-CR-30018
- - - - -

May 16, 1996

Before KING, GARWOOD, and DENNIS, Circuit Judges.

PER CURIAM:*

Alfred D. Lewis appeals his sentence, arguing that the district court abused its discretion by denying his motion for a downward departure pursuant to U.S.S.G. § 5K2.0 and that the court erred by denying his motion for a concurrent sentence and/or for downward departure pursuant to §§ 5G1.3(b) and (c). Because the sentencing court's refusal to depart downward pursuant to § 5K2.0 was not the result of a violation of the law or a misapplication of the guidelines, this court lacks

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

jurisdiction to review the court's refusal to depart. See United States v. DiMarco, 46 F.3d 476, 477 (5th Cir. 1995). Section 5G1.3 is not applicable to Lewis's case because Lewis was not subject to an undischarged term of imprisonment at the time of sentencing. See § 5G1.3. Accordingly, the judgment of the district court is AFFIRMED.

AFFIRMED.