

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-60751
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

VERSUS

MICHAEL FORD,

Defendant-Appellee.

Appeal from the United States District Court
For the Northern District of Mississippi
USDC No. 97-CR-45-ALL-B-D

May 18, 1998

Before Jolly, Benavides and Parker, Circuit Judges.

PER CURIAM:*

In this appeal, the Government contends that the district court erred in granting defendant, Michael Ford, a downward departure without prior notice. Under the Federal Rules of Criminal Procedure, a sentencing court must provide defense counsel and the Government an opportunity to comment upon matters relating to the appropriate sentence. See Fed. R. Crim. P. 32(c)(1). In

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Burns v. United States, 501 U.S. 129, 138 (1991), the Supreme Court established the notice requirement for Rule 32 in the context of upward departure. We subsequently concluded that the notice requirement of Rule 32 applies equally to downward departures. See United States v. Pankhurst, 118 F.3d 345, 357 (5th Cir.), cert. denied, __ U.S. __, 118 S.Ct. 630 (1997).

In this case, the PSR did not mention a possible downward departure and no pre-hearing submission by the defendant identified possible grounds for departure. As the Government was not given adequate notice that a downward departure would be considered, Ford's sentence is VACATED and the matter REMANDED to the district court for resentencing. This judgment neither expresses nor intimates any opinion whether the basis for the departure is appropriate. Accordingly, the sentence is

VACATED AND REMANDED FOR RESENTENCING.