

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-30164  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VELTA FERGINS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 97-CR-50061-ALL  
- - - - -

October 22, 1998

Before POLITZ, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:\*

Velta Fergins appeals her guilty-plea conviction for misapplication of credit union funds in violation of 18 U.S.C. § 657. She contends that the district court erred in refusing to grant a downward departure for acceptance of responsibility in addition to the two-level reduction in her offense level under § 3E1.1 of the U.S. Sentencing Guidelines based on her exceptional degree of contrition. She also argues that the district court erred in refusing to grant a downward departure under § 5K2.16 of the Guidelines because she voluntarily

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

disclosed the offense and because it was unlikely to have been discovered otherwise. This court lacks jurisdiction to review the district court's refusal to grant a downward departure to Fergins based on her exceptional acceptance of responsibility or her voluntary disclosure of the offense. See United States v. Brace, 145 F.3d 247, 263 (5th Cir. 1998)(en banc). We may review such a refusal only if the district court mistakenly assumed that it lacked authority to depart downward or if the refusal to grant a downward departure was the result of a violation of law or a misapplication of the Guidelines. Neither basis has been demonstrated herein.

APPEAL DISMISSED.