

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-31330
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICHARD D. DUNCAN, also known as
PARKER JAMES, also known as Jim Parks,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 98-CR-50032-02
- - - - -

October 20, 1999

Before JONES, WIENER, and STEWART, Circuit Judges.

PER CURIAM:*

Richard D. Duncan appeals his sentence, which was imposed after he entered a guilty plea to one count of mail fraud. Duncan contends, as his sole issue on appeal, that the district court erred by denying the Government's motion for a downward departure filed pursuant to U.S.S.G. § 5K1.1 because the district court found that Duncan had provided substantial assistance.

We may review the district court's refusal to grant a downward departure from the Guidelines only if the refusal was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

based on a violation of the law. *United States v. Powers*, 168 F.3d 741, 753 (5th Cir. 1999). Jurisdiction does not exist if the district court's refusal to depart downward is based on a determination that a departure is not warranted on the facts of the case. *United States v. Palmer*, 122 F.3d 215, 222 (5th Cir. 1997). Notwithstanding Duncan's assertions to the contrary, the record shows that the district court refused to depart downward based on the facts in the case. Accordingly, the district court's refusal to depart is not reviewable. The appeal is dismissed for lack of jurisdiction.

APPEAL DISMISSED.