

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-40190  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERIC DIONEL LEWIS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:97-CR-103-1  
- - - - -

November 6, 1998

Before DAVIS, DUHE', and PARKER, Circuit Judges.

PER CURIAM:\*

Eric Dionel Lewis appeals his guilty-plea conviction and sentence for possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841(a)(1). Lewis argues that the district court erroneously believed that it lacked the authority to grant a downward departure based on sentencing entrapment and that the district court did not consider the appropriate factors in determining whether his case was atypical. The district court considered Lewis' argument that he was predisposed to sell only small amounts of cocaine and that he would not have sold a large

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

amount of cocaine if the Government's confidential informant had not repeatedly requested it and offered him money and other assistance. The district court determined that Lewis had not demonstrated facts which warranted a downward departure based on sentencing entrapment. Because the district court did not deny the downward departure based on an erroneous assumption that it lacked the authority to depart downward based on sentencing entrapment, the district court's denial of Lewis' motion for a downward departure is unreviewable. See United States v. Burleson, 22 F.3d 93, 95 (5th Cir. 1994). Accordingly, Lewis' appeal is dismissed for lack of jurisdiction.

APPEAL DISMISSED.