

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 98-60015  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GARY D. WILLIAMS,  
also known as Gay Bird,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 1:97-CR-100-ALL-S  
- - - - -

April 16, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Gary D. Williams appeals his sentence following his guilty plea to possession of a firearm by a felon. Williams argues that the district court erred in failing to resolve disputed facts relevant to sentencing; in calculating his criminal history category; and in failing to grant a downward departure.

Williams has waived his first argument because his appellate brief does not identify the allegedly unresolved disputed factual issues. Yohey v. Collins, 985 F.2d 222, 223-24 (5th Cir. 1993);

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

FED. R. APP. P. 28(a)(6). We need not address Williams's claim that he should not have been assessed a criminal history point for an October 1987 conviction for simple assault because we find that this argument does not affect the correctness Williams's sentencing range under the guidelines. See Williams v. United States, 503 U.S. 193, 203 (1992). This court lacks jurisdiction to review Williams's argument that the district court erred by failing to depart downward because Williams allegedly helped to save the life of another inmate. Appellate jurisdiction exists only if the sentencing court's refusal to depart downward was the result of legal error or a misapplication of the Guidelines. United States v. DiMarco, 46 F.3d 476, 477 (5th Cir. 1995).

AFFIRMED IN PART AND DISMISSED IN PART.