IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 01-50753
Summary Calendar
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UNITED STATES OF AMERICA,

                                        Plaintiff-Appellee,

versus

JULIAN RIVERA-DURAN,

                                        Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. DR-01-CR-120-1

March 25, 2002

Before KING, Chief Judge, and HIGGINBOTHAM and BENAVIDES, Circuit
Judges.

PER CURIAM:[*]

     Julian Rivera-Duran appeals his sentence following his

conviction for illegal reentry in violation of 8 U.S.C. § 1326.

He argues that the district court erred in denying his motion for

a downward departure. Rivera-Duran asserts that the district

court's denial of his departure motion was based on an error of

law because the district court stated that it believed it did not

have legal authority to grant the motion.

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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that this opinion should not be published and is not precedent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.

The district court originally stated that it did not know of legal authority that would allow it to grant the departure motion but later clarified this statement by saying it believed it had legal authority to grant the motion but declined to do so based on its interpretation of other cases. Further review of the record also indicates that the district court was aware of Rivera-Duran's specific circumstances.

When a refusal to depart is based on the facts of a particular case, the appellate court lacks jurisdiction and the case should be dismissed. See United States v. Luqman, 130 F.3d 113, 115 (5th Cir. 1997). However, the appellate court will review the decision not to depart if the record indicates the district court based its decision on an error of law. Id.; see also United States v. Landerman, 167 F.3d 895, 899 (5th Cir. 1999). Because the record does not indicate that the district court based its decision on an error of law, this court does not have jurisdiction and the appeal is DISMISSED.