

**FILED**

March 17, 2004

Charles R. Fulbruge III  
Clerk

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 03-20692  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARTURO RODRIGUEZ-CANALES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(H-03-CR-39-ALL)

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Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:\*

Arturo Rodriguez-Canales ("Rodriguez") appeals his sentence, imposed following his guilty plea for illegal reentry. He claims the district court mistakenly believed it did not have authority to depart downward from the sentencing guidelines based on the double counting of his previous conviction.

We lack jurisdiction to review a refusal to depart downward, however, unless it was based on a mistaken belief that the court lacked authority to so depart. See, e.g., *United States v. Thames*,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

214 F.3d 608, 612 (5th Cir. 2000). The record reflects that the district court was aware that it had the authority to depart downward; it did not believe that Rodriguez' case warranted it. Therefore, we lack jurisdiction to review the determination. See *id.*; *United States v. DiMarco*, 46 F.3d 476, 477-78 (5th Cir. 1995).

**DISMISSED**