

FILED

June 23, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-10049
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHNNY BERNARD VAUGHN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:00-CR-73-1-C

Before BARKSDALE, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Johnny Bernard Vaughn, a federal prisoner (# 25787-177), appeals the district court's sua sponte denial of his motion for reduction of sentence based on substantial assistance, purportedly filed pursuant to FED. R. CRIM. P. 35(b).

Only the Government can file a motion for reduction of a defendant's sentence pursuant to Rule 35(b). United States v. Early, 27 F.3d 140, 141 (5th Cir. 1994) (citing Rule 35(b), historical note, 1991 amendment). Vaughn's Rule 35(b) motion 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

"an unauthorized motion which the district court was without jurisdiction to entertain." Id. at 142. Vaughn failed to make a "substantial threshold showing" of "unconstitutional motive" that might have permitted the district court to review the Government's refusal to file a Rule 35(b) motion. See United States v. Wade, 504 U.S. 181, 185-86 (1992).

The judgment of the district court is AFFIRMED.