

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2008

Charles R. Fulbruge III
Clerk

No. 08-10091
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

CEDRIC RAY TATUM, also known as Little Ced, also known as Black, also known as Cemo

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:00-CR-8-6

Before DAVIS, GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Cedric Ray Tatum, federal prisoner # 33588-077, appeals the district court's denial of his motion to compel the Government to file a motion for reduction of sentence pursuant to FED. R. CRIM. P. 35(b) and 18 U.S.C. §3742(a).

Neither §3742 nor 35(b) provide a jurisdictional basis upon which to entertain Tatum's motion. See *United States v. Early*, 27 F.3d 140, 141-42 (5th Cir. 1994). The Government's refusal to file a Rule 35 motion is reviewable only

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

if it is based on an unconstitutional motive, which Tatum does not allege. See *United States v. Sneed*, 63 F.3d 381, 389 n. 6 (5th Cir.1995). Tatum's motion is thus unauthorized and without jurisdiction. Accordingly, the appeal is DISMISSED for lack of jurisdiction.