

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-41508
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID BERGMAN-RALDA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-97-CR-267-ALL
- - - - -

April 16, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:*

David Bergman-Ralda (Bergman) appeals the district court's sentence following his guilty-plea conviction for illegally reentering the United States after having been deported. See 8 U.S.C. §§ 1326(a),(b). Bergman argues that the district court erred by failing to depart downward from the guidelines sentence.

Assuming, arguendo, that the district court mistakenly believed that it lacked to authority to depart, this court has jurisdiction to review the court's failure to depart. See United States v. Palmer, 122 F.3d 215, 222 (5th Cir. 1997). However,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

because Bergman has failed to demonstrate plain error in the court's failure to sua sponte award the departure, we AFFIRM. See United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994)(en banc). All outstanding motions are DENIED.

AFFIRMED.