IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-60087
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MAXINE MOODY,

Defendant-Appellant.

- - - - - - - - - -
Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 2:96-CV-117PS
- - - - - - - - - -
April 28, 1998

Before DUHÉ, DEMOSS and DENNIS, Circuit Judges.

PER CURIAM:*

Maxine Moody, federal prison # 03620-043, appeals the district court's denial of her motion to vacate, set aside, or correct her sentence under 28 U.S.C. § 2255. She argues that 1) she received ineffective assistance of counsel, 2) the sentencing court erred by refusing to grant the Government's motion for a downward departure, and 3) the Government breached the plea agreement when it did not object to the sentencing court's refusal to grant the motion for a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

downward departure and when it did not resubmit the motion within a year of the judgment of Moody's sentence.

Moody's ineffective-assistance-of-counsel claims are unsupported by the record, and she failed to establish that her attorney's performance was deficient or how she was prejudiced by her attorney's conduct. See Strickland v. Washington, 466 U.S. 668, 687 (1984). Her claim that the Government breached the plea agreement is refuted by the record and without merit.

Moody's argument that the district court improperly applied the Sentencing Guidelines and refused to grant the motion for a downward departure under U.S.S.G. § 5K1.1 does not give rise to a constitutional issue cognizable in a § 2255 proceeding. United States v. Segler, 37 F.3d 1131, 1134 (5th Cir. 1994).

Moody's motion to supplement the record on appeal is DENIED.

AFFIRMED.