

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-10825  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARDELBERT MITCHELL, also known as Day Day,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:98-CR-23-1  
- - - - -

February 10, 1999

Before BARKSDALE and EMILIO M. GARZA, Circuit Judges.\*

PER CURIAM:\*\*

Ardelbert Mitchell appeals his sentence for distribution of cocaine base within 1,000 feet of a public housing facility. Mitchell contends that the district court abused its discretion by denying him a downward departure.

We lack jurisdiction to review a defendant's challenge to his sentence based upon mere dissatisfaction with the court's

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\*This matter is being decided by a quorum. 28 U.S.C. § 46(d).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

refusal to grant a downward departure. *United States v. DiMarco*,

46 F.3d 476, 477 (5th Cir. 1995). A refusal to depart downward is a violation of law only if the district court mistakenly assumed that it lacked the authority to depart. *United States v. Burlison*, 22 F.3d 93, 95 (5th Cir. 1994).

The district court did not mistakenly assume that it lacked the authority to depart. Accordingly, his appeal is DISMISSED.