

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20523
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN JESUS GONZALEZ-LOZOYA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-CR-5-1
- - - - -

February 22, 1999

Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Juan Jesus Gonzalez-Lozoya appeals the sentence he received after pleading guilty to being an alien, previously deported after commission of an aggravated offense, who reentered the United States without permission of the Attorney General. Gonzalez-Lozoya argues that the district court erred in failing to make a downward departure. After reviewing the sentencing hearing and the arguments on appeal, we find that the district court did not misapprehend its authority to depart but that,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

instead, its refusal to depart was an exercise of discretion which this court lacks jurisdiction to review on appeal. See United States v. Burleson, 22 F.3d 93, 95 (5th Cir. 1994); United States v. DiMarco, 46 F.3d 476, 477 (5th Cir. 1995).

APPEAL DISMISSED FOR LACK OF JURISDICTION.