

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-10001
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHNNY LEE DAWSON,
also known as Johnnie Lee Dawson,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:96-CR-25-11-Y
- - - - -

August 19, 1998

Before KING, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Johnnie Lee Dawson appeals the district court's denial of his motion for a downward departure upon his resentencing on drug charges. He argues that his sentence was unfair and that this court should remedy this unfairness by setting forth additional factors, not "heretofore" defined, that sentencing courts must consider in determining whether to grant a downward departure.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Dawson has not shown that the district court mistakenly believed that it could not depart or that the court's refusal to depart was in violation of the law. Accordingly, this court lacks jurisdiction to consider his appeal. See United States v. DiMarco, 46 F.3d 476, 478 (5th Cir. 1995).

APPEAL DISMISSED.