

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20515
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CALVIN ALEXANDER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-CR-29-ALL
- - - - -

February 11, 1999

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

PER CURIAM:**

Calvin Alexander argues that the district court abused its discretion in concluding that it lacked the authority to depart downward in imposing his sentence.

We have reviewed the record, including the briefs of the parties, and find that we do not have jurisdiction to review the district court's denial of Alexander's motion to depart downward

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

at sentencing. The district court denied the motion based on its

determination that a departure is not warranted under the facts of the case. Its decision was not based on the mistaken belief that it did not have the authority to depart downward.

Therefore, the district court's decision is not subject to review. See United States v. Palmer, 122 F.3d 215, 222 (5th Cir. 1997). The appeal is DISMISSED for lack of jurisdiction. See United States v. DiMarco, 46 F.3d 476, 478 (5th Cir. 1995).

APPEAL DISMISSED.