

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50182
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BYRON DWAYNE HARRIS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-97-CR-99-1
- - - - -
December 10, 1998

Before DAVIS, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Byron Dwayne Harris challenges the sentence imposed following his guilty-plea conviction for possession with the intent to distribute crack cocaine, in violation of 21 U.S.C. § 841(a)(1). He contends that the district court erroneously believed it did not have the discretion to depart downwardly and/or to refuse to consider certain otherwise relevant sentencing facts in order to effectuate the Sentencing Commission's stated goal of severely punishing mid- and high-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

level drug dealers rather than low-level drug dealers, such as himself.

Harris has not shown that the district court believed a downward departure was warranted but precluded by the guidelines. His appeal does not present a reviewable issue. Accordingly, the district court's judgment is affirmed. See United States v. Brace, 145 F.3d 247, 263 (5th Cir.)(en banc), cert. denied, 1998 WL 651586 (Nov. 2, 1998); see also United States v. McKinney, 53 F.3d 664, 677 (5th Cir. 1995).

AFFIRMED.