

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 00-4304

LARRY RUSSELL BRICKLE,

Defendant-Appellant.

Appeal from the United States District Court
for the District of South Carolina, at Orangeburg.
Cameron McGowan Currie, District Judge.
(CR-98-422)

Submitted: September 14, 2000

Decided: October 6, 2000

Before NIEMEYER, WILLIAMS, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Allen B. Burnside, Assistant Federal Public Defender, Columbia,
South Carolina, for Appellant. J. Rene Josey, United States Attorney,
Eric William Ruschky, Assistant United States Attorney, Columbia,
South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Larry Russell Brickle appeals from his twenty-one month sentence imposed following his guilty plea to felony failure to pay child support in violation of 18 U.S.C.A. § 228(a)(3) (West 2000). On appeal, Brickle attacks the sentencing court's denial of his request for a downward departure under United States Sentencing Commission, Guidelines Manual, § 5K2.10, p.s. (Nov. 1998). Brickle asserts that the wrongful conduct of his children's maternal grandmother prompted him to decline to pay child support and warranted a downward departure.

A defendant may not appeal a district court's refusal to depart downward at sentencing unless such refusal was based on a mistaken view that it lacked the authority to depart. See United States v. Bayerle, 898 F.2d 28, 31 (4th Cir. 1990). Here, the sentencing court simply declined to award Brickle the departure he requested because the court found it unwarranted, not because it held a mistaken view that it lacked the authority to depart. We therefore dismiss this appeal. We dispense with oral argument because the facts and legal contentions of the parties are adequately presented in the materials before the court and because argument would not aid the decisional process.

DISMISSED