

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i>
v.
INNOCENT A. BOSAH, <i>Defendant-Appellant.</i>

No. 01-4027

Appeal from the United States District Court
for the District of Maryland, at Greenbelt.
Alexander Williams, Jr., District Judge.
(CR-96-426-AW)

Submitted: September 28, 2001

Decided: November 9, 2001

Before WILLIAMS, MOTZ, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

John O. Iweanoge, LAW OFFICES JOHN O. IWEANOGE, Washington, D.C., for Appellant. Stephen M. Schenning, United States Attorney, David I. Salem, Assistant United States Attorney, Greenbelt, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Innocent A. Bosah pled guilty to participating in a scheme to defraud numerous mail order companies in violation of 18 U.S.C. § 371 (1994), and was sentenced to a term of twenty-one months incarceration. He appeals his sentence, contending that the district court abused its discretion when it failed to rule on Bosah's motion for a departure based on his status as a deportable alien. We dismiss the appeal.

Bosah requested a downward departure from the guideline range on the ground that, because he was a deportable alien, he would be held in custody by the Immigration and Naturalization Service after he completed his sentence of imprisonment, and would not be permitted to serve the last part of his sentence in a half-way house as other conspirators might be permitted to do. Without commenting on Bosah's departure motion, the court sentenced him within the guideline range to a term of twenty-one months imprisonment.

An appeals court does not have jurisdiction to review the district court's decision not to depart downward unless the district court mistakenly believed that it lacked authority to depart downward. *United States v. Bayerle*, 898 F.2d 28, 31 (4th Cir. 1990). When the district court is silent as to its reason for not departing, this Court will not infer that the district court believed that it lacked authority to depart. *United States v. Bailey*, 975 F.2d 1028, 1035 (4th Cir. 1992); *see also United States v. Rowen*, 73 F.3d 1061, 1063 (10th Cir. 1996) (appeals court will not assume district court's silence implies that it did not understand its authority to depart when nothing in record suggests lack of understanding). In Bosah's case, the district court said nothing that would permit the inference that it did not understand its authority to depart downward.

We therefore dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED