

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4152

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JODY SCOTT CALLOWAY,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Charlotte. Lacy H. Thornburg,
District Judge. (CR-00-160)

Submitted: December 18, 2003

Decided: January 15, 2004

Before LUTTIG, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Charles L. Morgan, Jr., Charlotte, North Carolina, for Appellant.
Robert J. Conrad, Jr., United States Attorney, Kenneth M. Smith,
Assistant United States Attorney, Charlotte, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jody Scott Calloway pled guilty to bank larceny, 18 U.S.C. §§ 2113(c), 2 (2000), and money laundering, 18 U.S.C.A. §§ 1956(h), 2 (West 2000 & Supp. 2003). The district court imposed a sentence of seventy-eight months. Calloway appeals the sentence, arguing that the district court abused its discretion when it refused to depart below the guideline range pursuant to U.S. Sentencing Guidelines Manual § 5K2.0, p.s. (2002). We dismiss.

At sentencing, Calloway proffered a variety of factors that he believed warranted a downward departure. The district court decided not to depart. In this circumstance, we lack jurisdiction to review the district court's decision unless it resulted from a mistaken belief that the court lacked the authority to depart. United States v. Matthews, 209 F.3d 338, 352-53 (4th Cir. 2000); United States v. Bayerle, 898 F.2d 28, 30 (4th Cir. 1990). There is no indication here that the court failed to recognize its authority to depart.

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