

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 16-6079**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BILLY RAY CRAWFORD, JR.,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Florence. Terry L. Wooten, Chief District Judge. (4:05-cr-00470-TLW-1)

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Submitted: March 17, 2016

Decided: March 22, 2016

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Before WILKINSON, NIEMEYER, and KING, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Billy Ray Crawford, Jr., Appellant Pro Se. Jimmie Ewing, Assistant United States Attorney, Columbia, South Carolina, Arthur Bradley Parham, Assistant United States Attorney, Florence, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Billy Ray Crawford, Jr., appeals the district court's order denying his motion to reduce sentence under Fed. R. Crim. P. 35(b) or U.S. Sentencing Guidelines Manual § 5K1.1, p.s. Crawford argues on appeal that the Government obligated itself in the plea agreement to move for a downward departure for his substantial assistance. We affirm.

It is well-settled that whether to file a Rule 35(b) motion is a matter left to the Government's discretion. Fed. R. Crim. P. 35(b); United States v. Dixon, 998 F.2d 228, 230 (4th Cir. 1993). A court may remedy the Government's refusal to move for a sentence reduction under Rule 35(b) if: (1) the Government has obligated itself in the plea agreement to move for the reduction; or (2) the Government's refusal to move for the reduction was based on an unconstitutional motive. Wade v. United States, 504 U.S. 181, 185-86 (1992).

After review of the record, we conclude that neither circumstance is present here. The plea agreement between Crawford and the Government clearly establishes that the decision whether to file a Rule 35(b) motion rested with the Government's discretion, and Crawford did not claim in the motion to reduce sentence that the Government's refusal to file a Rule 35(b) motion was based on an unconstitutional motive.

Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED