

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 95-5184

JAMES A. TOWNSEND,

Defendant-Appellant.

Appeal from the United States District Court
for the District of South Carolina, at Columbia.
Matthew J. Perry, Jr., Senior District Judge.
(CR-94-441-MJP, CR-94-914-MJP, CR-94-859-MJP)

Submitted: December 19, 1995

Decided: January 12, 1996

Before LUTTIG and MOTZ, Circuit Judges, and BUTZNER,
Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

Creighton B. Coleman, MCCUTCHEN, BLANTON, RHODES &
JOHNSON, L.L.P., Winnsboro, South Carolina, for Appellant.
J. Preston Strom, Jr., United States Attorney, Dean A. Eichelberger,
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Unpublished opinions are not binding precedent in this circuit.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:

Appellant James A. Townsend appeals his sentence for the transportation of fraudulently acquired property under 18 U.S.C. § 2 (1988), 18 U.S.C.A. §§ 1341, 2314 (West Supp. 1995). The plea agreement unambiguously provided that if the Government deemed Townsend's assistance to be substantial, the Government would move for a downward departure. Although Townsend provided some assistance, the Government did not deem the assistance to be substantial, and consequently declined to file a USSG § 5K1.1 (Nov. 1994) motion. Townsend claims the Government breached its plea agreement with Townsend by failing to move for a downward departure in his sentence based on substantial assistance under § 5K1.1. Townsend claims the Government's decision was not rationally related to a legitimate governmental objective. Finding no error, we affirm.

A party alleging the breach of a plea agreement bears the burden of proving that breach. United States v. Dixon, 998 F.2d 228, 230 (4th Cir. 1993). While a district court generally cannot review the Government's refusal to move for a § 5K1.1 departure, review is necessitated if the defendant makes a "substantial threshold showing" that the Government's decision was not rationally related to a legitimate governmental objective. Wade v. United States, 504 U.S. 181, 185-86 (1992); see United States v. Conner, 930 F.2d 1073 (4th Cir.), cert. denied, 502 U.S. 958 (1991). The threshold showing must transcend a mere recitation of the assistance provided by the defendant. Wade, 504 U.S. at 186.

Townsend fails to make the substantial threshold showing. Rather, he only offers a mere recitation of the extent of his assistance. As the Supreme Court noted in Wade, "[a]lthough a showing of assistance is a necessary condition for relief, it is not a sufficient one." Id. at 187. Thus, we affirm the district court's order. We dispense with oral argu-

ment because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED