

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 98-4305

RODNEY H. WILLIAMS,

Defendant-Appellant.

Appeal from the United States District Court
for the District of South Carolina, at Charleston.
Patrick Michael Duffy, District Judge.
(CR-97-583)

Submitted: July 27, 1999

Decided: August 16, 1999

Before MURNAGHAN, ERVIN, and MICHAEL,
Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

David P. McCann, Charleston, South Carolina, for Appellant. J. Rene
Josey, United States Attorney, Scott N. Schools, Assistant United
States Attorney, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Rodney Williams appeals his sentence.* Williams and his wife pled guilty to one count of bank robbery by force or violence, 18 U.S.C. § 2113(a), (d) (1994), and one count of using and carrying a handgun during and in relation to a crime of violence, 18 U.S.C.A. § 924(c) (West 1994 & Supp. 1999). Williams contends that the district court erred in determining that it did not have the authority to depart from the sentencing guidelines based upon his alleged substantial assistance. See U.S. Sentencing Guidelines Manual, § 5K1.1 (1997). We affirm.

District courts do not have the authority to depart from the sentencing guidelines based upon substantial assistance in the absence of a Government motion unless the Government's reluctance to file the § 5K1.1 motion is based upon an unconstitutional motive or not rationally related to a legitimate Government end. See Wade v. United States, 504 U.S. 181, 185-87 (1992); United States v. Schaefer, 120 F.3d 505, 508-09 (4th Cir. 1997); see also In re Sealed Case No. 97-3112 (Sentencing Guidelines' "Substantial Assistance"), ___ F.3d ___, 1999 WL 462422 (D.C. Cir. July 9, 1999) (No. 97-3112).

Because Williams did not assert that the Government's motive for not filing a § 5K1.1 motion was unconstitutional or not rationally related to a legitimate end, we affirm the district court's judgment. 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.

AFFIRMED

*This appeal was remanded to the district court with instructions to make factual findings concerning whether there was excusable neglect warranting an extension of the ten-day appeal period. See United States v. Williams, No. 98-4303 (4th Cir. Jan. 19, 1999) (unpublished). The district court found that there was excusable neglect and extended the time period in which to file the notice of appeal.