

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
GARRY JERMAINE PURVIS,
Defendant-Appellant.

No. 01-7775

Appeal from the United States District Court
for the District of South Carolina, at Florence.
Cameron McGowan Currie, District Judge.
(CR-99-164)

Submitted: December 11, 2001

Decided: February 25, 2002

Before NIEMEYER and MOTZ, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

Garry Jermaine Purvis, Appellant Pro Se. William Earl Day, II, Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Garry Jermaine Purvis appeals from an order of the district court denying his motion to compel the government to file a motion for a downward departure under *U.S. Sentencing Guidelines Manual* § 5K1.1, p.s. (2000). Purvis was sentenced in September 1999. His pro se motion to compel a § 5K1.1 motion was filed in August 2001, after the government's time to file either a § 5K1.1 motion or a motion to reduce Purvis' sentence under Rule 35(b) of the Federal Rules of Criminal Procedure had expired. Moreover, our review of the record reveals that Purvis sought to compel a § 5K1.1 motion at sentencing and the government explained that his assistance had not been substantial. Purvis' plea agreement did not obligate the government to request a departure unless it deemed his assistance to be substantial, and Purvis has made no showing that the government's refusal to move for a departure was based on an unconstitutional motive or unrelated to a legitimate government purpose. *See Wade v. United States*, 504 U.S. 181, 186 (1992).

We therefore affirm the district court's order. 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