

UNPUBLISHED

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

ANTONIO RODRIGUEZ HOLMES,  
*Defendant-Appellant.*

No. 02-4259

Appeal from the United States District Court  
for the Eastern District of Virginia, at Newport News.  
Jerome B. Friedman, District Judge.  
(CR-01-110)

Submitted: August 13, 2002

Decided: October 7, 2002

Before WILKINS and TRAXLER, Circuit Judges, and  
HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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**COUNSEL**

James S. Ellenson, Newport News, Virginia, for Appellant. Paul J. McNulty, United States Attorney, Shannon O. McEwen, Special Assistant United States Attorney, Norfolk, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

**OPINION**

## PER CURIAM:

Antonio Rodriguez Holmes appeals his conviction following his guilty plea to possession of a firearm after being convicted of a misdemeanor crime of domestic violence and his sentence to fifteen months in prison and three years of supervised release. Because we may not review the district court's refusal to depart downward, we dismiss the appeal.

Holmes argues his criminal history category over-represented the seriousness of his criminal history under the Sentencing Guidelines. Overstatement of the seriousness of a defendant's actual criminal history is a basis for downward departure. *U.S. Sentencing Guidelines Manual* § 4A1.3 (2000); *United States v. Hall*, 977 F.2d 861, 866 (4th Cir. 1992). Because it clearly appears that the district court knew it possessed the authority to grant Holmes' motion to depart downward when it declined to do so, we may not review the court's refusal to depart downward. See *United States v. Matthews*, 209 F.3d 338, 352-53 (4th Cir. 2000).

We therefore dismiss Holmes' appeal. 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*