

NON-PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1924

UNITED STATES OF AMERICA

v.

STEVEN BROWN,

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

(Dist. Court No. 95-92-03)
District Court Judge: Clarence C. Newcomer

Submitted Under Third Circuit LAR 34.1(a)
January 17, 2002

Before: ALITO and ROTH, Circuit Judges, and SCHWARZER, Senior District Judge.

(Opinion Filed: January 29, 2002)

MEMORANDUM OPINION OF THE COURT

PER CURIAM:

Because we write for the benefit of the parties, the background of the appeal is not set out.

We reject defendant's argument that he was entitled to a downward departure. Under Federal Rule of Criminal Procedure 35(b), a district court "may reduce a sentence to reflect a defendant's subsequent substantial assistance in investigating or prosecuting another person, in accordance with the guideline and policy statements issued by the Sentencing Commissions under 28 U.S.C. 994." The record is clear that the District Court gave due consideration to the assistance provided by the defendant, determined that he did not provide substantial assistance as required by Rule 35(b), and exercised its discretion to sentence the defendant within the appropriate range provided by the Sentencing Guidelines.

This Court lacks jurisdiction to review a district court's discretionary

refusal to depart downward. See, e.g., *United States v. McBroom*, 124 F.3d 533, 541 n. 9 (3d Cir. 1997); *United States v. Mummert*, 34 F.3d 201, 205 (3d Cir. 1994). Accordingly, appellate jurisdiction is lacking, and we dismiss defendant's appeal.