

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-4515

UNITED STATES OF AMERICA

v.

TROY SHABAZZ,
a/k/a "TROY ROBINSON,"
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Criminal No. 01-cr-00247
(Honorable Eduardo C. Robreno)

Submitted Pursuant to Third Circuit LAR 34.1(a)
July 15, 2002

Before: SCIRICA, ALITO and FUENTES, Circuit Judges

(Filed: July 26, 2002)

OPINION OF THE COURT

SCIRICA, Circuit Judge.

On July 16, 2001, Troy Robinson pled guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. 922(g)(1). Robinson was placed in a sentencing range of 46 to 57 months' imprisonment under the Sentencing Guidelines. Robinson moved for a downward departure based on a family hardship pursuant to U.S.S.G. 5H1.6 (Family Ties and Responsibilities, and Community Ties). The District Court denied Robinson's motion and sentenced him to 51 months in prison, a \$1,000 fine and a \$100 special assessment. We will dismiss the appeal for lack of jurisdiction.

I.

On appeal, Robinson contends that the District Court did not consider his family hardship when imposing sentence. He suggests we exercise plenary review.

We disagree. If a district court imposes a sentence in violation of law, or misapplies the Sentencing Guidelines, we exercise plenary review. See *United States v. Spiropoulos*, 976 F.2d 155, 160 n.2 (3d Cir. 1992). But if a district court acknowledges its authority to depart and decides not to do so, we lack appellate jurisdiction. See *United States v. McQuilkin*, 97 F.3d 723, 729 (3d Cir. 1996); *United States v. Denardi*,

892 F.2d 269, 272 (3d Cir. 1989). In this case, the District Court expressly acknowledged it had the power to depart from the Guidelines, but determined Robinson's family hardship did not warrant departure. Thus, we lack jurisdiction over this matter under 18 U.S.C. 3742. Denardi, 892 F.2d at 271-72.

II.

For the foregoing reasons, we will dismiss the appeal for lack of jurisdiction.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Anthony J. Scirica
Circuit Judge

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JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on July 15, 2002. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the appeal of the judgment of the District Court entered December 20, 2001, be, and the same is hereby dismissed for lack of jurisdiction. All of the above in accordance with the opinion of this Court.

ATTEST:

Acting Clerk

DATED: 26 July 2002