

NOT PRECEDENTIAL

IN THE UNITED STATES COURT
OF APPEALS
FOR THE THIRD CIRCUIT

NO. 03-4431

UNITED STATES OF AMERICA

v.

JOSE DELVALLE
Appellant

On Appeal From the United States
District Court
For the Eastern District of Pennsylvania
(D.C. Crim. Action No. 03-cr-00230-1)
District Judge: Hon. Legrome D. Davis

Submitted Pursuant to Third Circuit LAR 34.1(a)
July 1, 2004

BEFORE: AMBRO, ALDISERT and STAPLETON, Circuit Judges

(Opinion Filed: July 9, 2004)

OPINION OF THE COURT

STAPLETON, Circuit Judge:

Appellant Jose DelValle pled guilty to distribution of crack cocaine. He was sentenced to twenty months of incarceration. On appeal, he argues only that the District Court “erred in not granting a downward departure on the grounds that this case departed from the ‘heartland’ of the sentencing guidelines.” Appellant’s Br/ at 8.

As appellant acknowledges, the District Court recognized that it had the authority to depart. It necessarily follows that we lack jurisdiction to review its decision not to depart. *United States v. Vitale*, 159 F.3d 810 (3d Cir. 1998); *United States v. Denardi*, 892 F.2d 269 (3d Cir. 1989).

The appeal will be dismissed for lack of jurisdiction.