

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-5237

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ERIC ESTIMABLE,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. Sol Blatt, Jr., Senior District Judge. (CR-04-103)

Submitted: July 21, 2006

Decided: August 14, 2006

Before MICHAEL, TRAXLER, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

J. Robert Haley, Assistant Federal Public Defender, Charleston, South Carolina, for Appellant. Reginald I. Lloyd, United States Attorney, Rhett DeHart, Assistant United States Attorney, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Eric Estimable was convicted by a jury of one count of interstate transportation of stolen motor vehicles, in violation of 18 U.S.C. §§ 2312, 2 (2000). The district court sentenced Estimable to a twenty-four-month term of imprisonment to be followed by three years of supervised release. In his initial appeal, the Government moved to remand for resentencing in light of the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005). We granted the motion to remand, affirmed Estimable's conviction, vacated the sentence, and remanded for resentencing. United States v. Estimable, 131 F. App'x 413 (4th Cir. 2005) (No. 04-5041). On remand, the district court imposed an identical sentence, and Estimable again appeals. We affirm.

On appeal, Estimable argues that the district court erred in failing to recognize its authority to downwardly depart based on his assertions that Haiti's unwillingness to accept deportees would result in his indefinite incarceration. A district court's failure to grant a downward departure is not reviewable unless a district court was under the mistaken impression that it lacked the authority to depart. United States v. Matthews, 209 F.3d 338, 352 (4th Cir. 2000); see also United States v. Cooper, 437 F.3d 324, 333 (3d Cir. 2006) (collecting cases declining to review a district court's decision not to depart, even after Booker). Our review of the transcript of the resentencing hearing

convinces us that the district court clearly understood its authority to depart, but concluded that a departure was not appropriate, and that the relief sought by Estimable should be pursued before immigration authorities. The court's decision that a departure was not appropriate is therefore not reviewable.

Accordingly, we affirm Estimable's sentence. 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