

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

F I L E D

March 22, 2011

No. 10-10804
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ALFRED BROOKS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:98-CR-84-2

Before WIENER, PRADO, and OWEN, Circuit Judges.

PER CURIAM:*

Alfred Brooks, federal prisoner # 30337-077, appeals the district court's denial of his "Petition for Reduction of Sentence under Informer: Quitan and Popular Action in Accordance to 21 U.S.C. § 886(a), 28 U.S.C. § 994(n), 28 U.S.C. § 2501, and Rule 35(b)." He argues that the Government promised to file a motion for a reduction of his sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure based on his substantial assistance in providing information and testifying against another inmate.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Only the Government can file a motion for reduction of a defendant's sentence pursuant to Rule 35(b). *United States v. Early*, 27 F.3d 140, 141 (5th Cir. 1994) (per curiam). Brooks's motion was "an unauthorized motion which the district court was without jurisdiction to entertain." *See id.* at 142. Brooks does not argue that the Government's refusal to file such a motion was based on an unconstitutional motive. *See, e.g., United States v. Grant*, 493 F.3d 464, 467 (5th Cir. 2007). He has also failed to show that the Government bargained away its discretion concerning whether to file the motion. *See United States v. Price*, 95 F.3d 364, 368 & n.2 (5th Cir. 1996) (per curiam). Accordingly, we affirm the district court's denial of Brooks's motion. *See Early*, 27 F.3d at 142; *see also Brewster v. Dretke*, 587 F.3d 764, 769 n.3 (5th Cir. 2009), *cert. denied*, 130 S. Ct. 3368 (2010).

AFFIRMED.