

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-4331

United States of America,

Appellee,

v.

Howard Levern Snider,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: November 20, 2006

Filed: November 27, 2006

Before SMITH, MAGILL, and BENTON, Circuit Judges.

PER CURIAM.

Howard Levern Snider appeals the district court's¹ order denying his motion to compel the government to file a substantial-assistance sentence-reduction motion. Because Snider's plea agreement provided that the government retained discretion to decide whether to file a substantial-assistance motion, and because Snider did not make a substantial threshold showing that the government's refusal to do so was prompted by an unconstitutional motive, such as Snider's race or religion, or that the government's refusal was irrational, we agree with the district court that Snider was

¹The Honorable Laurie Smith Camp, United States District Judge for the District of Nebraska.

not entitled to relief. See Wade v. United States, 504 U.S. 181, 185-87 (1992) (district courts may review government's refusal to file substantial-assistance motion and grant remedy if refusal was based on unconstitutional motive, but defendant has no right to discovery or evidentiary hearing unless he makes substantial threshold showing of government's improper motive); United States v. Pamperin, 456 F.3d 822, 825 (8th Cir. 2006) (threshold showing requires more than presentation of evidence of substantial assistance and general allegations of improper motive, because court presumes prosecutor properly discharged her duties absent clear evidence to contrary); United States v. Mullins, 399 F.3d 888, 890 (8th Cir. 2005) (relief for government's refusal to file substantial-assistance motion is provided only if such refusal was prompted by unconstitutional motive or was irrational).

Accordingly, we affirm, and we deny Snider's pending motions.
