

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-2830

United States of America,

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Appellee,

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v.

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Appeal from the United States

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District Court for the Eastern

Gaylon Don Ball,

*

District of Missouri.

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Appellant.

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[UNPUBLISHED]

Submitted: February 3, 2001

Filed: February 7, 2001

Before BEAM, LOKEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Gaylon Don Ball appeals the district court's¹ denial of his motion to compel the U.S. Attorney's Office for the Eastern District of Missouri to file a Federal Rule of Criminal Procedure 35(b) motion to reward the assistance he provided to the U.S. Attorney's Office for the Eastern District of Arkansas. We agree with the court that Mr. Ball failed to make a substantial threshold showing that the refusal was in bad faith, irrational, or based on an unconstitutional motive. See Wade v. United States,

¹The Honorable Stephen N. Limbaugh, United States District Judge for the Eastern District of Missouri.

504 U.S. 181, 186 (1992) (mere showing that defendant provided substantial assistance, whether standing alone or coupled with generalized allegations of government's improper motive, is insufficient); United States v. Wilkerson, 179 F.3d 1083, 1086 (8th Cir. 1999) (government's discretionary refusal to move for downward departure cannot be challenged unless defendant makes substantial threshold showing that refusal was in bad faith, irrational, or based on unconstitutional motive).

Accordingly, we affirm the judgment of the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.