

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 **SUMMARY ORDER**

4 **THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER**
5 **AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER**
6 **COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER**
7 **COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN**
8 **ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.**

9 At a stated term of the United States Court of Appeals for the
10 Second Circuit, held at the Thurgood Marshall United States
11 Courthouse, Foley Square, in the City of New York, on the 22nd day
12 of September, two thousand and four.

13 PRESENT:

14 HON. ROBERT D. SACK,
15 HON. REENA RAGGI,
16 HON. PETER W. HALL,

17 Circuit Judges.

18 -----
19 UNITED STATES of AMERICA,

20 Appellee,

21 - v -

No. 03-1653

22 GUSTAVO QUINTERO,

23 Defendant,

24 ROBERTO PAGHENSE,

25 Defendant-Appellant.
26 -----

27 For Appellee:

28 David N. Kelley, United States
29 Attorney for the Southern District
30 of New York, Jennifer G. Rodgers,
31 Celeste L. Koeleveld, Assistant
32 United States Attorneys for the
33 Southern District of New York, New
York, NY.

1 For Appellant: David N. Lewis, Lewis & Fiore, New
2 York, NY.

3 Appeal from the United States District Court for the
4 Southern District of New York (George B. Daniels, Judge).

5 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND
6 DECREED that the appeal be, and it hereby is, DISMISSED.

7 The defendant-appellant Roberto Paghense appeals from a
8 judgment of conviction entered on October 16, 2003, in the United
9 States District Court for the Southern District of New York
10 (George B. Daniels, Judge), after a plea of guilty to conspiracy
11 to distribute and possess with intent to distribute at least one
12 kilogram of heroin, in violation of 21 U.S.C. § 846. Paghense
13 moved for a downward departure based on extraordinary family
14 circumstances. The district court considered Paghense's
15 arguments and concluded that the circumstances were not
16 sufficiently extraordinary to warrant a departure from the
17 Guidelines range. The court therefore denied Paghense's motion.

18 On appeal, Paghense does not argue, nor do we find reason to
19 conclude, that the district court misapprehended the scope of its
20 authority or misinterpreted the law. "A district court's
21 decision not to depart is ordinarily not reviewable, unless the
22 refusal is due to an erroneous interpretation of the law or an
23 erroneous view of the extent of its departure authority." United
24 States v. Aponte, 235 F.3d 802, 803 (2d Cir. 2000) (citation and
25 internal quotation marks omitted). We decline Paghense's
26 invitation to reconsider this precedent. See United States v.
27 Santiago, 268 F.3d 151, 154 (2d Cir. 2001). We therefore have no
28 authority to review the district court's decision.

29 For the foregoing reason, the appeal is hereby DISMISSED.

30 FOR THE COURT:
31 ROSEANN B. MACKECHNIE, Clerk

32 September 22, 2004
33
34 By: Lucille Carr, Deputy Clerk Date