

No. 03-3131
United States v. Malone

level by five points. Thereafter, the district court sentenced Malone to an imprisonment term of 102 months and three years of supervised release.

On appeal, Malone argues that the district court failed to apply properly the sentencing guidelines in refusing to grant a greater downward departure. A defendant's appeal from a final sentence is governed by 18 U.S.C. § 3742.

Upon review, we conclude that Malone's argument does not fit within the confines of § 3742. It is well established in this circuit that this court lacks jurisdiction to hear an appeal "contesting the extent of a downward departure as such appeals do not fall under 18 U.S.C. § 3742." *United States v. Nesbitt*, 90 F.3d 164, 166 (6th Cir. 1996); *United States v. Gregory*, 932 F.2d 1167, 1168-69 (6th Cir. 1991). Because the sentencing judge was obviously aware of his ability to depart downward from the sentencing guidelines, evidenced by the fact that he granted Malone a five level departure, the extent of the downward departure is not reviewable. *See Nesbitt*, 90 F.3d at 166.

Accordingly, we hereby dismiss the appeal for a lack of jurisdiction and affirm Malone's conviction and sentence.