

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

WADE v. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

No. 91-5771. Argued March 23, 1992—Decided May 18, 1992

After his arrest on, *inter alia*, federal drug charges, petitioner Wade gave law enforcement officials information that led them to arrest another drug dealer. Subsequently, he pleaded guilty to the charges, and the District Court sentenced him to the 10-year minimum sentence required by 21 U.S.C. §841(b)(1)(B) and the United States Sentencing Commission, Guidelines Manual (USSG). The court refused Wade's request that his sentence be reduced below the minimum to reward him for his substantial assistance to the Government, holding that 18 U.S.C. §3553(e) and USSG §5K1.1 empower the district courts to make such a reduction only if the Government files a motion requesting the departure. The Court of Appeals affirmed, rejecting Wade's arguments that the District Court erred in holding that the absence of a Government motion deprived it of the authority to reduce his sentence and that the lower court was authorized to enquire into the Government's motives for failing to file a motion.

Held:

1. Federal district courts have the authority to review the Government's refusal to file a substantial-assistance motion and to grant a remedy if they find that the refusal was based on an unconstitutional motive. Since the parties assume that the statutory and Guidelines provisions pose identical and equally burdensome obstacles, this Court is not required to decide whether §5K1.1 "implements" and thereby supersedes §3553(e) or whether the provisions pose separate obstacles. In both provisions, the condition limiting the court's authority gives the Government a power, not a duty, to file a substantial-assistance motion. Nonetheless, a prosecutor's discretion when exercising that power is subject to constitutional limitations that district courts can enforce. Thus, a defendant would be entitled

to relief if the prosecution refused to file a motion for a suspect reason such as the defendant's race or religion. However, neither a claim that a defendant merely provided substantial assistance nor additional but generalized allegations of improper motive will entitle a defendant to a remedy or even to discovery or an evidentiary hearing. A defendant has a right to the latter procedures only if he makes a substantial threshold showing of improper motive. Pp.3-4.

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2. Wade has failed to raise a claim of improper motive. He has never alleged or pointed to evidence tending to show that the Government refused to file a motion for suspect reasons. And he argues to no avail that, because the District Court erroneously believed that no impermissible motive charge could state a claim for relief, it thwarted his attempt to show that the Government violated his constitutional rights by withholding the motion arbitrarily or in bad faith. While Wade would be entitled to relief if the prosecutor's refusal to move was not rationally related to any legitimate Government end, the record here shows no support for his claim of frustration, and the claim as presented to the District Court failed to rise to the level warranting judicial enquiry. In response to the court's invitation to state what evidence he would introduce to support his claim, Wade merely explained the extent of his assistance to the Government. This is a necessary, but not a sufficient, condition for relief, because the Government's decision not to move may have been based simply on its rational assessment of the cost and benefit that would flow from moving. Pp.5-6.
936 F.2d 169, affirmed.

SOUTER, J., delivered the opinion for a unanimous Court.