

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 20, 2009

Charles R. Fulbruge III
Clerk

No. 08-40733

Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LARRY JOSEPH, JR.,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:04-CR-26-1

Before WIENER, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Larry Joseph, Jr., federal prisoner # 10774-078, was sentenced to 151 months in prison following his plea of guilty to possession with the intent to distribute more than five grams, but less than 50 grams, of cocaine base (crack). Following amendments to the Sentencing Guidelines that lowered the offense levels for crack cocaine offenses, the district court granted a motion by Joseph

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

pursuant to 18 U.S.C. § 3582(c)(2) and reduced his sentence to 130 months, which was at the bottom of the amended guidelines range.

Joseph now appeals, arguing that the district court's failure to consider the 18 U.S.C. § 3553(a) factors or a sentence below the amended guidelines range when it resentenced him violated *United States v. Booker*, 543 U.S. 220 (2005), and *Kimbrough v. United States*, 552 U.S. 85 (2007).

Joseph's arguments are foreclosed in light of our recent decision in *United States v. Dublin*, 572 F.3d 235, 236-39 (5th Cir. 2009), *petition for cert. filed* (Sept. 21, 2009) (No. 09-6657).

Accordingly, the judgment of the district court is AFFIRMED, the Government's motion for summary affirmance is GRANTED, and the Government's motion for an extension of time to file a brief is DENIED.