

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50548

Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee,

versus

PEDRO DE LA ROSA-VARGAS

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(01-CR-27)

October 9, 2002

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Pedro De La Rosa-Vargas, federal prisoner # 15075-180, appeals the district court's denial of his motion for modification of his sentence pursuant to 18 U.S.C. § 3582(c)(2). He argues that Amendment 632 to the United States Sentencing Guidelines should be applied retroactively to reduce his offense level under U.S.S.G.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 2L1.2. Amendment 632 is not listed in U.S.S.G. § 1B1.10(c), p.s. and, therefore, it is not retroactive. Further, under U.S.S.G. § 2L1.2, as amended, De La Rosa-Vargas' offense level would have remained the same because his prior conviction for burglary of a habitation is considered a crime of violence under U.S.S.G. § 2L1.2(b)(1)(A) and its application notes.¹ Because Amendment 632 is not retroactive, the district court lacked authority to modify De La Rosa-Vargas' sentence under 18 U.S.C. § 3582(c)(2).²

AFFIRMED.

¹ See U.S.S.G. § 2L1.2(b)(1)(A), comment. (n. 1(B)(ii)) (Nov. 2001).

² See *United States v. Lopez*, 26 F.3d 512, 515 & n.3 (5th Cir. 1994).