

August 20, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-50859  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MIGUEL CARREON-PALACIO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. DR-99-CR-644-2-FB  
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Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Miguel Carreon-Palacio, federal prisoner # 19628-057, is serving a 90-month sentence for possession with intent to distribute marijuana. He appeals from the denial of the order denying him a reduction in sentence under 18 U.S.C. § 3582(c)(2). He argues that Amendment 635 to the Sentencing Guidelines clarified the law to allow for consideration of his mitigating role under U.S.S.G. § 3B1.2 and should therefore be retroactively applied to him.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

While we will consider the effect of "clarifying" amendments on direct appeal, a different rule applies when the issue is raised on collateral attack pursuant to 18 U.S.C. § 3582(c)(2); "[E]ligibility for consideration under [18 U.S.C. § 3582(c)(2)] is triggered only by an amendment listed in [U.S.S.G. § 1B1.10(c)] that lowers the guideline range." United States v. Drath, 89 F.3d 216, 217-18 (5th Cir. 1996) (internal quotations and citation omitted). Amendment 635 is not listed in U.S.S.G. § 1B1.10(c); therefore, a reduction in sentence under 18 U.S.C. § 3582(c) is inconsistent with the Sentencing Commission's policy statement, and the amendment cannot be given retroactive effect. See id.

In light of the foregoing, the district court did not abuse its discretion.

AFFIRMED.