

December 14, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10425
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WESLEY JAMES WILSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CR-141-Y-6

Before KING, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

Wesley James Wilson, federal prisoner # 23795-077, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for resentencing in view of United States v. Booker, 125 S. Ct. 738 (2005), and his motion for reconsideration. He argues that the district court abused its discretion because he was entitled to resentencing under Amendment 505 to the United States Sentencing Guidelines and under Booker.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

"Section 3582(c)(2) [of Title 18] permits a district court to reduce a term of imprisonment when it is based upon a sentencing range that has subsequently been lowered by an amendment to the Guidelines, if such a reduction is consistent with the policy statements issued by the Sentencing Commission." United States v. Gonzalez-Balderas, 105 F.3d 981, 982 (5th Cir. 1997). Wilson's Booker argument is not cognizable in the context of an 18 U.S.C. § 3582(c)(2) motion because it is not based on a retroactive amendment to the Guidelines. See United States v. Shaw, 30 F.3d 26, 29 (5th Cir. 1994). The district court also correctly noted that Wilson had previously filed a motion for resentencing under Amendment 505, which the district court had denied. Wilson has not shown that the district court abused its discretion in denying his 18 U.S.C. § 3582(c)(2) motion and his motion for reconsideration. Gonzalez-Balderas, 105 F.3d at 982.

AFFIRMED.