

June 21, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-11128
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRIAN ANTHONY DAVIS, also known as Stamma,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:92-CR-365-29

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Brian Anthony Davis, federal prisoner # 40427-053, appeals the district court's denial of his motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2). Davis argues that the Supreme Court's decision in United States v. Booker, 543 U.S. 220 (2005), effectively amended the United States Sentencing Guidelines and that his life sentence must be modified because it was enhanced based on a judicial finding of a quantity of drugs

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

not alleged in the indictment, proved at trial, or admitted by Davis.

A district court has the authority to reduce a sentence under § 3582(c)(2) only if the Sentencing Commission has amended a pertinent guideline and has made that amendment retroactively applicable. U.S.S.G. § 1B1.10(a), (c). The district court correctly determined that a Booker challenge, based on a Supreme Court decision and not a retroactive guidelines amendment, is not cognizable under § 3582(c)(2).

AFFIRMED.