

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50753
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID LEE QUINLAN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-91-CR-76 (3)
- - - - -

April 2, 1996

Before HIGGINBOTHAM, DUHÉ, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

David Lee Quinlan appeals from the district court's order denying his motion to reduce his prison term, filed pursuant to 18 U.S.C. § 3582(c)(2). He argues that his "career offender" sentence is now illegal under United States v. Bellazerius, 24 F.3d 698 (5th Cir.), cert. denied, 115 S. Ct. 375 (1994). This challenge is barred by a provision in his plea agreement by which he waived his right to challenge his sentence in "any post-conviction proceeding." See United States v. Wilkes, 20 F.3d 651, 653 (5th Cir. 1994). Quinlan also argues, for the first

Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

time on appeal, that the statute under which he was convicted, 21 U.S.C. § 846, is unconstitutional. This argument is frivolous. United States v. Owens, 996 F.2d 59, 61 (5th Cir. 1993).

AFFIRMED.