

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-20221
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FREDDY OCAMPO ARCE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-91-CR-149-3
- - - - -

October 21, 1997

Before POLITZ, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

Appellant Freddy Ocampo Arce (Arce), federal prisoner # 59323-079, appeals the district courts denial of his motion for modification of the imposed term of imprisonment under 18 U.S.C. § 3582(c)(2). Arce argues that his sentence should be reduced under Amendment 518 to U.S. Sentencing Guideline § 2D1.1 based on the amount of drugs he actually delivered rather than the amount he negotiated. Additionally, Arce argues that Amendment 442 to § 1B1 allows the retroactive application of Amendment 518.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Amendments 518 and 442 are not listed as retroactive in § 1B1.10(c) of the Guidelines, Arce's claim concerning these amendments is not cognizable under § 3582(c)(2). See United States v. Shaw, 30 F.3d 26, 28- 29 (5th Cir. 1994).

Arce's appeal is without arguable merit and is thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.

APPEAL DISMISSED.