## IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT United States Cou

United States Court of Appeals Fifth Circuit

**FILED**January 21, 2010

No. 08-20440 Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ALFRED LEWIS,

Defendant - Appellant

Appeal from the United States District Court for the Southern District of Texas USDC No. 4:96-CR-116-6

Before WIENER, DeMOSS, and SOUTHWICK, Circuit Judges. PER CURIAM:\*

Alfred Lewis, federal prisoner #72777-079, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his concurrent 262-month sentences for conspiring to possess with intent to distribute a mixture and substance containing cocaine base and distribution of cocaine base. Lewis challenges the propriety of his sentencing as a career offender, and he also

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Page: 2 Date Filed: 01/21/2010 Case: 08-20440 Document: 00511009880

No. 08-20440

argues that § 3582(c)(2) is applicable to his sentences based upon the retroactive amendments to the crack cocaine guidelines.

Lewis may not use a § 3582(c)(2) motion to challenge the appropriateness of the district court's application of a career offender enhancement in its calculation of his original sentences. See United States v. Whitebird, 55 F.3d 1007, 1011 (5th Cir. 1995). Further, the district court did not err in denying relief because "[t]he crack cocaine guideline amendments do not apply to prisoners sentenced as career offenders." United States v. Anderson, — F.3d —, No. 08-41314, 2009 WL 4895261, \*2 (5th Cir. Dec. 21, 2009).

AFFIRMED.