IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 12-10217
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CEDRIC LAMONTE GRAY, also known as C-Nile,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:06-CR-7-1

Before KING, CLEMENT and HIGGINSON, Circuit Judges.

PER CURIAM:[*]

Cedric Lamonte Gray, federal prisoner # 28009-077, was sentenced to 188 months in prison after he pleaded guilty to distribution of cocaine base. He appeals the district court's judgment that granted his motion filed pursuant to 18 U.S.C. § 3582(c)(2). Gray contends that the district court erred by failing to afford him the opportunity to review and challenge a probation officer's report that the district court relied upon in making its decision to reduce Gray's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sentence to 150 months of imprisonment, a sentence above the new guidelines range.

"A defendant must have notice of the contents of [a Presentence Report] addendum and notice that the court is considering it such that he will have the opportunity to respond to or contest it." *United States v. Mueller*, 168 F.3d 186, 189 (5th Cir. 1999). The district court erred when it failed to provide Gray with an opportunity to review and respond to the probation officer's report. *See Mueller*, 168 F.3d at 189. The record on appeal does not include the report. Accordingly, we conclude that on this record, we cannot determine whether any error was harmless. Thus, we vacate the judgment of the district court and remand to permit the district court to provide Gray with an opportunity to review and comment on the report. We express no opinion on the disposition of Gray's motion on remand.

VACATED AND REMANDED.