

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

March 12, 2013

Lyle W. Cayce
Clerk

No. 12-50367

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KENNETH WAYNE LEWIS,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:08-CR-70-1

Before KING, CLEMENT, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Kenneth Wayne Lewis, federal prisoner # 11311-280, moves in this court for leave to proceed in forma pauperis (IFP) on appeal from the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for a sentence reduction. By moving to proceed IFP, Lewis is challenging the district court's certification that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); FED. R. APP. P. 24(a)(5).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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He does not challenge the district court's determination that he was ineligible for a sentence reduction. Thus, Lewis has abandoned any challenge to that determination. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987); *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993) (issues not adequately briefed by pro se appellant are waived). Because the district court determined that Lewis was ineligible for a sentence reduction, it did not err or abuse its discretion by not considering the 18 U.S.C. § 3553(a) factors or Lewis's post-sentencing conduct. *Cf. Dillon v. United States*, 130 S. Ct. 2683, 2691 (2010); *United States v. Larry*, 632 F.3d 933, 936 (5th Cir. 2011).

Lewis has not shown that his appeal involves "legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted). The motion for leave to proceed IFP on appeal is denied, and the appeal is dismissed as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED.