

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10451
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN ARTHUR THOMPSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:91-CR-228-H

October 19, 2001

Before DeMOSS, PARKER and DENNIS, Circuit Judges.

PER CURIAM:*

John Arthur Thompson, federal prisoner # 21988-077, was convicted of conspiracy to commit bank robbery, aiding and abetting two bank robberies, and the use of a firearm in connection with one of the robberies. He appeals the district court's denial of his motion for modification of his sentence pursuant to 18 U.S.C. § 3582(c)(2) wherein he argued that the Sentencing Guidelines had been amended retroactively and that such amendment resulted in a lowered sentencing range for his offense. See United States v. Shaw, 30 F.3d 26 (5th Cir. 1994).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Although Amendment 599 altered the language and substance of U.S.S.G. § 2K2.4, comment.(n.2), such alteration was not relevant to Thompson's sentence. Thompson received the benefit of application note two as it existed in the prior version of the commentary and as it exists subsequent to Amendment 599. To the extent that he argues for the first time on appeal that his sentence was the result of double-counting, we reject Thompson's argument. See United States v. Olano, 507 U.S. 725, 733 (1993); United States v. McCarthy, 77 F.3d 522, 536 (1st Cir. 1996). Thompson has shown no abuse of discretion in the district court's denial of his motion. See United States v. Mueller, 168 F.3d 186, 188 (5th Cir. 1999).

AFFIRMED.