

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

No. 02-40286
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIA BERRY, also known as Tony Berry,

Defendant-

Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:92-CR-93-1

September 30, 2002

Before JONES, STEWART and DENNIS, Circuit Judges.

PER CURIAM:*

Antonia Berry, federal prisoner # 03256-043, appeals the district court's denial of his motion to reduce sentence pursuant to 18 U.S.C. § 3582(c). Berry argues that his base offense level should be reduced under Amendment 505 to the sentencing guidelines. Section 3582(c)(2) authorizes a reduction in the term of imprisonment imposed when a sentencing range subsequently has been lowered by the Sentencing Commission and the amendment has been made retroactive. Berry has

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

not shown that a reduction in his base offense level based on Amendment 505 would result in a change in the applicable term of imprisonment. The district court did not abuse its discretion in denying the motion. Therefore, we dismiss this appeal as frivolous, noting that Berry raised an identical and unsuccessful motion to reduce his sentence in 1995. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

We do not address the various other issues raised by Berry in his appellate brief because these issues were not raised before the district court or exceed the scope of his 18 U.S.C. § 3582(c) motion. The motion for judicial notice and the supplemental motion are DENIED.

Berry is CAUTIONED that further frivolous filings may result in the imposition of sanctions, including dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court and any court subject to this court's jurisdiction.

APPEAL DISMISSED AS FRIVOLOUS; MOTIONS DENIED; SANCTIONS WARNING ISSUED.