

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50173
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BAUDELIO LARA-REY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-00-CR-140-ALL
- - - - -

October 29, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Baudelio Lara-Rey, federal prisoner # 57727-080, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for reduction of his sentence for illegal reentry into the United States in violation of 8 U.S.C. §§ 1326(a) & (b)(2). Lara-Rey argues that he is entitled to a sentence reduction under Amendment 632, because that recent amendment to the sentencing guidelines is merely a clarification and retroactively applies to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

reduce U.S.S.G. § 2L1.2's enhancement for deportation following an aggravated felony conviction.

Pursuant to 18 U.S.C. § 3582(c)(2), a sentencing court may reduce a term of imprisonment "based on a sentencing range that has been subsequently lowered by the Sentencing Commission . . . , if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(2) applies only to amendments to the sentencing guidelines that operate retroactively, as set forth in subsection (c) of the applicable policy statement. U.S.S.G. § 1B1.10, p.s.; United States v. Drath, 89 F.3d 216, 217-18 (5th Cir. 1996).

Amendment 632 cannot be given retroactive effect in the context of an 18 U.S.C. § 3582(c)(2) motion because Amendment 632 is not listed in U.S.S.G. § 1B1.10(c), p.s., and such an application would be inconsistent with the policy statement. See Drath, 89 F.3d at 218.

The district court's judgment denying Lara-Key's motion for reduction of sentence is AFFIRMED.