

April 21, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-50771  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES ROTHENBACH,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-97-CR-203-2  
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Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

Charles Rothenbach, federal prisoner No. 79245-080, appeals the district court's denial of his post-conviction motion for a reduction of his sentence or downward departure from the guidelines range. He asserts that the court should have reduced his sentence based on his employment history, family and community ties, and exceptional family circumstances.

The district court is prohibited from modifying a term of imprisonment once it has been imposed except in certain limited

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

circumstances. 18 U.S.C. § 3582(c). Rothenbach's post-conviction motion for a sentence reduction or downward departure does not fall under any provision of 18 U.S.C. § 3582(c) and, thus, was unauthorized and without a jurisdictional basis. See United States v. Early, 27 F.3d 140, 141-42 (5th Cir. 1994). Although the district court considered the motion on its merits, it should have denied the motion for lack of jurisdiction. See id. at 142. On that alternative basis, the district court's order is

AFFIRMED.