

August 19, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20108
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NHA KIEM (DAVID) TRAN, also known as
David Tran, also known as David,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-89-CR-135-1

Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Nha Kiem Tran, a/k/a David Tran, federal prisoner # 48793-079, is appealing the district court's denial of his 18 U.S.C. 3582(c)(2) motion to reduce his sentence based on amendment 640 to the sentencing guidelines.

Amendment 640 to U.S.S.G. § 2D1.1(a)(3) is not listed in U.S.S.G. § 1B1.10(c). Therefore, this amendment may not be applied retroactively to reduce Tran's sentence. See United

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States v. Drath, 89 F.3d 216, 217-18 (5th Cir. 1996). Tran has not shown that the court abused its discretion in denying his motion for a modification of sentence. The judgment of the district court is AFFIRMED.