

October 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20435
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GERALD TIMOTHY MCNEIL,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-96-CR-26-1

Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:*

Gerald Timothy McNeil ("McNeil"), federal prisoner #70984-079, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to modify his sentence. McNeil was convicted of conspiracy to possess with the intent to distribute cocaine base and aiding and abetting possession with the intent to distribute cocaine base. McNeil argues that the district court erroneously increased his base offense level for possession of a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

firearm, and he contends that he was entitled to a three-level reduction for acceptance of responsibility.

A district court may reduce a term of imprisonment under 18 U.S.C. § 3582 when it is based upon a sentencing range that has subsequently been lowered by an amendment to the Guidelines, if the reduction is consistent with the policy statements issued by the Sentencing Commission. United States v. Gonzalez-Balderas, 105 F.3d 981, 982 (5th Cir. 1997). Reduction pursuant to 18 U.S.C. § 3582(c)(2) is discretionary, and this court reviews a district court's refusal to lower a defendant's sentence for an abuse of discretion. United States v. Shaw, 30 F.3d 26, 29 (5th Cir. 1994).

The district court did not abuse its discretion in denying McNeil's motion because his arguments are outside the scope of a 18 U.S.C. § 3582 motion. See 18 U.S.C. § 3582; United States v. Drath, 89 F.3d 216, 217-18 (5th Cir. 1996).

AFFIRMED.