

October 21, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40339
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS GONZALEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:93-CR-96-1

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

PER CURIAM:*

Luis Gonzalez, federal prisoner # 04434-078, appeals the district court's denial of his motion for modification of his sentence pursuant to 18 U.S.C. § 3582(c)(2). Gonzalez was convicted of possession with intent to distribute cocaine. Gonzalez argues that Amendment 528 merely clarifies the career offender guideline and, therefore, he need not establish the retroactivity requirement of 18 U.S.C. § 3582(c)(2).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The language of the statute provides that a district court may not modify a term of imprisonment pursuant to 18 U.S.C. § 3582(c)(2) unless the term has been subsequently lowered by an amendment to the Sentencing Guidelines. 18 U.S.C. § 3582(c)(2); see United States v. Gonzalez-Balderas, 105 F.3d 981, 982 (5th Cir. 1997). An amendment to the Sentencing Guidelines may not be applied retroactively upon a motion under 18 U.S.C. § 3582(c)(2) unless it is specifically set forth in U.S.S.G. § 1B1.10(c). U.S.S.G. § 1B1.10(a), p.s. (Nov. 2001). Because Amendment 528 is not listed in U.S.S.G. § 1B1.10(c), it may not be applied retroactively on Gonzalez's motion. See United States v. Drath, 89 F.3d 216, 218 (5th Cir. 1996). Accordingly, the district court did not abuse its discretion when it denied Gonzalez's 18 U.S.C. § 3582(c)(2) motion.

AFFIRMED.