

October 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60314
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTHONY CLARK MARION,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 3:94-CR-36-D

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

PER CURIAM:*

Anthony Clark Marion, federal prisoner # 09895-042, moves this court to proceed in forma pauperis (IFP) to appeal the denial of his 18 U.S.C. § 3582 motion to modify his sentence. He argues that he is entitled to a reduction in sentence under U.S.S.G. § 3E1.1 for his acceptance of responsibility.

Section 3582(c) limits sentence modification only to certain narrow circumstances, none of which are applicable in Marion's case. See 18 U.S.C. § 3582(c)(1)(A)(on motion of Bureau of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Prisons); § 3582(c)(1)(B)(clerical error or, on Government's motion, substantial assistance); § 3582(c)(2)(sentencing range subsequently lowered by Sentencing Commission). Marion's § 3582 motion therefore was unauthorized and without a jurisdictional basis, and, thus, the district court was without jurisdiction to entertain it. See United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994).

Marion has not demonstrated a nonfrivolous issue for appeal, and, therefore, he cannot proceed IFP. See FED. R. APP. P. 24(a) Because his appeal is without arguable merit, it is dismissed as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED.