

April 20, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-60647  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THOMAS LEE HARGETT,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 1:99-CR-110-2-P  
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Before JONES, SMITH, and PRADO, Circuit Judges.

PER CURIAM:\*

Thomas Lee Hargett, federal prisoner # 11123-042, appeals the district court's denial of his motion to modify his sentence pursuant to 18 U.S.C. § 3582(c)(2). Hargett pleaded guilty in 2000 to conspiracy to manufacture and possess with intent to distribute methamphetamine. As the amendment on which Hargett relies was in effect at the time he was sentenced, the district court was without jurisdiction to consider Hargett's motion. See United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We decline to address Hargett's argument that, pursuant to Blakely v. Washington, 124 S. Ct. 2531 (2004), the use of prior convictions to enhance his sentence violated his Sixth Amendment right to a jury trial, because Hargett raised this issue for the first time in his reply brief. See United States v. Hoster, 988 F.2d 1374, 1383 (5th Cir. 1993).

For the foregoing reasons, we AFFIRM the judgment of the district court on the basis that the district court lacked jurisdiction to consider it.