

June 19, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-11171  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HOWARD WASHINGTON WOOD, also known as Skelly,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:92-CR-365-10  
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Before JONES, Chief Judge, and JOLLY and DENNIS, Circuit Judges.

PER CURIAM:\*

Howard Washington Wood, federal prisoner # 36384-053, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence based on retroactive Amendment 591 to the Sentencing Guidelines. Wood pleaded guilty to conspiracy to possess with the intent to distribute 50 grams or more of cocaine base, and he was sentenced based on the determination in the presentence report that the offense involved 15 kilograms of cocaine base. Wood argues that Amendment 591 dictates that he must be resentenced because his indictment did not charge him

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

with 15 kilograms of cocaine base and he did not admit to this amount.

Wood's argument is without merit. Amendment 591 applies to the determination of the appropriate Chapter Two offense guideline section, and Wood was properly sentenced under U.S.S.G. § 2D1.1, the appropriate offense guideline section for his conviction under 21 U.S.C. § 846. Amendment 591 is irrelevant to the determination of base (or specific) offense levels within the applicable offense guideline section or to any consideration of relevant conduct. U.S.S.G. App. C, Amendment 591 (Nov. 2000).

The judgment of the district court is AFFIRMED. The Government's motion for summary affirmance in lieu of filing a brief is GRANTED. The Government's alternative motion for an extension of time is DENIED as moot.