

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 16, 2011

Lyle W. Cayce
Clerk

No. 08-40583
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PATRICK WAYNE MCKINLEY, also known as Fat Pat,

Defendant-Appellant

Appeals from the United States District Court
for the Eastern District of Texas
USDC No. 6:01-CR-31-16

Before KING, JOLLY and GRAVES, Circuit Judges.

PER CURIAM:*

Patrick Wayne McKinley, federal prisoner # 08891-078, has applied for leave to proceed in forma pauperis (IFP) and for appointment of counsel in this appeal from the district court's order granting his motion to reduce his sentence. *See* 18 U.S.C. § 3582(c)(2). The district court imposed a sentence of 120 months of imprisonment pursuant to recent amendments to the penalties applicable to cocaine base offenses.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 08-40583

The website of the Bureau of Prisons shows that McKinley was released from prison on November 13, 2009. Where a defendant has begun serving a term of supervised release, the appeal of the denial of his § 3582(c)(2) motion is moot. *United States v. Booker*, __ F. 3d __, 2011 WL 2505070 (5th Cir. June 24, 2011). Here, as with the defendant in *Booker*, McKinley makes no mention of his term of supervised release and does not argue that it should be terminated; his arguments pertain only to relief under § 3582(c)(2). Any termination of supervised release must be sought by a motion under 18 U.S.C. § 3583(e)(1). *See Booker* __ F. 3d __, 2011 WL 2505070.

IT IS ORDERED that the motions to proceed IFP and for appointment of counsel are DENIED and the appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2.