

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

United States Court of Appeals
Fifth Circuit

FILED

October 22, 2010

Lyle W. Cayce
Clerk

No. 08-50295

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DERRICK TOMMY ROBINSON,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:00-CR-25-2

Before DAVIS, SMITH and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Derrick Tommy Robinson, federal prisoner # 03339-180, was convicted in 2002 of conspiracy to possess with intent to distribute crack cocaine. Robinson was sentenced at the bottom of the guidelines imprisonment range to a 324-month term of imprisonment. Subsequently, the district court granted the Government's motion under Federal Rule of Criminal Procedure 35 and reduced Robinson's term of imprisonment to 300 months. Robinson then filed a motion under 18 U.S.C. § 3582(c)(2) seeking a reduction of his sentence pursuant to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

recent amendments to the sentencing guidelines applicable to crack cocaine offenses. Robinson requested that his sentence of imprisonment be reduced to 262 months.

The district court granted the motion, reduced Robinson's offense level by two levels to level 38, and sentenced Robinson at the bottom of the resulting imprisonment range to a 262-month term of imprisonment. Robinson moved for reconsideration of the district court's order, arguing that he did not receive the benefit of the Rule 35 reduction. The district court denied the motion for reconsideration. Robinson gave notice of his appeal and has applied for leave to proceed in forma pauperis (IFP).

Robinson contends that the amended sentence did not give him the benefit of the Government's Rule 35 motion. Robinson has not shown that there is a nonfrivolous issue with respect to whether the district court abused its discretion in refusing to order a further sentence reduction in light of its prior order granting a Rule 35 reduction. Although the district court arguably could have granted such a reduction, it was not compelled to do so. *See United States v. Cooley*, 590 F.3d 293, 297 (5th Cir. 2009); *United States v. Dublin*, 572 F.3d 235, 237 (5th Cir.), *cert. denied*, 130 S. Ct. 517 (2009). The request for leave to proceed IFP on appeal is DENIED, and the appeal is DISMISSED AS FRIVOLOUS. *See Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.