

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

United States Court of Appeals
Fifth Circuit

FILED

August 13, 2010

Lyle W. Cayce
Clerk

No. 09-51124

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BILLY RAY WHEELOCK,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:92-CR-128-1

Before WIENER, PRADO, and OWEN, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Billy Ray Wheelock appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for reduction of sentence. In his § 3582(c)(2) motion, Wheelock asserts that he is eligible for a sentence reduction based on Amendments 591, 706, and 715 to the Sentencing Guidelines.

Wheelock was sentenced to a statutorily-mandated term of life imprisonment on his conviction for conspiracy to distribute more than 50 grams of crack cocaine because he committed that offense following two or more prior

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

convictions for a felony drug offense. *See* 21 U.S.C. § 841(b)(1)(A). Because, pursuant to our decision in *United States v. Carter*, 595 F.3d 575, 577-81 (5th Cir. 2010), Wheelock was subject to a statutorily-mandated sentence that exceeded the guideline range, he was ineligible for a sentence reduction under § 3582(c)(2), regardless of any retroactive amendments affecting that guideline range.

Accordingly, the judgment of the district court is **AFFIRMED**; the government's motion for summary affirmance is **GRANTED**; and its alternative motion for an extension of time is **DENIED** as moot.