

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

United States Court of Appeals
Fifth Circuit

FILED

September 10, 2012

Lyle W. Cayce
Clerk

No. 12-10235
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HECTOR ESPINOZA, also known as Toro,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:97-CR-257-2

Before HIGGINBOTHAM, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Hector Espinoza, federal prisoner # 78037-079, appeals from the district court's order denying him a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(2) based on the most recent amendment to the Sentencing Guidelines as to crack cocaine. Espinoza previously received a reduction under the prior crack-cocaine amendment from 364 months of imprisonment to 294 months.

A district court may reduce a sentence "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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subsequently been lowered by the Sentencing Commission.” § 3582(c)(2). We review a decision on whether to reduce a sentence pursuant to § 3582(c)(2) for an abuse of discretion. *United States v. Carter*, 595 F.3d 575, 577 (5th Cir. 2010). However, we review *de novo* the district court’s interpretation of the Sentencing Guidelines and sentencing statutes. *Id.*

In 2008, Espinoza’s sentence was reduced when his total offense level was reduced from 41 to 39 and his guideline range was reduced from 324-405 months of imprisonment to 262-327 months. Applying the most recent amendment, the marijuana equivalent of the amount of crack cocaine for which Espinoza would be held accountable is decreased substantially, but the total marijuana equivalency of all of the drugs places him at offense level 36. With three levels added for Espinoza’s role in the offense, his offense level remains 39, and his range of imprisonment remains 262-327 months. Because Espinoza’s Guideline sentencing range remains unchanged, he is not eligible for a reduction in sentence. *See* § 3582(c)(2).

AFFIRMED.