

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

United States Court of Appeals  
Fifth Circuit

**FILED**

September 28, 2012

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No. 12-30162  
Summary Calendar

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Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BRANDON SMITH, also known as Taburk,

Defendant-Appellant

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:00-CR-319-3

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Before WIENER, ELROD, and GRAVES, Circuit Judges.

PER CURIAM:\*

Brandon Smith, federal prisoner # 27265-034, appeals the denial of a motion for a sentence reduction under 18 U.S.C. § 3582(c)(2). Smith argues that the denial of the motion has resulted in an above-guidelines sentence, even though he was initially sentenced within the Sentencing Guidelines. We review the district court's decision for abuse of discretion. *United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-30162

In this case, the district court determined that Smith was eligible for a reduction in sentence based on Amendment 750 of the Sentencing Guidelines; however, the court concluded that a reduction was not appropriate due to Smith's misconduct while incarcerated. *See Dillon v. United States*, 130 S. Ct. 2683, 2691 (2010). The district court properly considered Smith's post-sentencing conduct in determining whether to grant relief under § 3582(c)(2). U.S.S.G. § 1B1.10, comment. (n.1(B)(iii)); *United States v. Larry*, 632 F.3d 933, 936 (5th Cir. 2011). Moreover, the court had no obligation to grant such relief. *See Evans*, 587 F.3d at 673-74.

AFFIRMED.