

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

No. 13-51038
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 30, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KEVIN DARNELL GREENWOOD,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:08-CR-101-1

Before DAVIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Kevin Darnell Greenwood, federal prisoner # 56475-080, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for a reduction in sentence based on Amendment 750 to the Sentencing Guidelines. The district court originally sentenced Greenwood to 188 months in prison following his 2008 guilty plea to possession with intent to distribute at least five grams of crack cocaine. The district court determined that a reduction of Greenwood's

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 13-51038

sentence was not warranted under § 3582(c)(2) because Amendment 750 did not lower his guidelines range of imprisonment. Greenwood argues that he is entitled to a sentencing reduction because the district court incorrectly included 254.9 grams of crack cocaine as relevant conduct in calculating his base offense level; he asserts that the substance in question was in fact powder cocaine, and he also alleges that because the State dismissed the pending charges related to the seizure of the cocaine, it may not be considered as relevant conduct.

We review a district court's decision to reduce a sentence under § 3582(c)(2) for abuse of discretion, while we consider the district court's interpretation of the Guidelines de novo. *United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009). Because Amendment 750 did not have the effect of lowering Greenwood's applicable guidelines range, the district court did not abuse its discretion by denying the motion. *See Dillon v. United States*, 560 U.S. 817, 826 (2010). Greenwood's attempt to relitigate the facts underlying his original sentence exceeds the scope of a § 3582(c)(2) proceeding. *See United States v. Hernandez*, 645 F.3d 709, 712 (5th Cir. 2011); *United States v. Whitebird*, 55 F.3d 1007, 1011 (5th Cir. 1995). Consequently, the judgment of the district court is AFFIRMED. Greenwood's motion for leave to proceed in forma pauperis on appeal is DENIED.