

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

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No. 15-50549  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

April 11, 2016

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GEORGE ANDREW KELLEY,

Defendant-Appellant

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Appeals from the United States District Court  
for the Western District of Texas  
USDC No. 6:04-CR-213

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Before DAVIS, JONES, and HAYNES, Circuit Judges.

PER CURIAM:\*

George Andrew Kelley, federal prisoner # 36385-180, pleaded guilty to conspiracy to manufacture and distribute methamphetamine and was sentenced to the statutory maximum sentence of 240 months of imprisonment and three years of supervised release. He seeks leave to proceed in forma pauperis (IFP) on appeal from the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence based on Amendment 782 to the

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 15-50549

Sentencing Guidelines. By moving to proceed IFP, Kelley is challenging the district court's certification that his appeal is not taken in good faith because it is frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

Kelley contends that the district court abused its discretion in denying his § 3582(c)(2) motion. He asserts that when the district court found that he was a danger to society, the district court ignored evidence that he presented, showing that he has no significant prior criminal history, he has a low security classification and is housed at a minimum security facility, he has had no disciplinary reports during his incarceration, and he has completed numerous education programs offered by the Bureau of Prisons. He further contends that upon release, he will reside with his family and will have a job waiting for him.

The record supports the district court's determination that Kelley's offense was serious and that he posed a danger to society if released earlier based on the nature of his offense. The district court properly considered these factors. *See United States v. Larry*, 632 F.3d 933, 936 (5th Cir. 2011). The district court considered Kelley's motion as a whole, including his arguments concerning his postconviction conduct and his rehabilitation, as well as the 18 U.S.C. § 3553(a) factors in declining to exercise its discretion to reduce Kelley's sentence. Therefore, Kelley cannot show that the district court abused its discretion in denying his motion. *See United States v. Henderson*, 636 F.3d 713, 717 (5th Cir. 2011).

Kelley has failed to show that he will raise a nonfrivolous issue on appeal. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, Kelley's IFP motion is DENIED. Kelley's motion to remand is also DENIED. Additionally, because this appeal is frivolous, it is DISMISSED. *See 5TH CIR. R. 42.2.*