

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

\_\_\_\_\_  
No. 15-50695  
Summary Calendar  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

June 21, 2016

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE MARQUEZ,

Defendant-Appellant

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Appeals from the United States District Court  
for the Western District of Texas  
USDC No. 6:10-CR-242-1  
\_\_\_\_\_

Before HIGGINBOTHAM, SMITH, and OWEN, Circuit Judges.

PER CURIAM:\*

Jose Marquez, federal prisoner # 42452-177, who was convicted of conspiracy to distribute at least 500 grams of methamphetamine and five kilograms of cocaine and conspiracy to commit money laundering, moves for leave to proceed in forma pauperis (IFP) on appeal. He seeks to challenge the denial of his 18 U.S.C. § 3582(c)(2) motion in which he sought a sentence

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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reduction pursuant to Sentencing Guidelines Amendments 782 and 788, which retroactively lowered certain offense levels under U.S.S.G. § 2D1.1(c).

Marquez was responsible for more than the quantity of marijuana that triggers the highest base offense level under both the version of § 2D1.1(c) in effect when he was sentenced and the retroactive, amended version. Accordingly, Amendments 782 and 788 did not change his offense level or lower his guidelines range, and the district court did not abuse its discretion in denying him a sentence reduction under § 3582(c)(2). *See* U.S.S.G. § 1B1.10(a)(2)(B); *United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009).

Because the appeal lacks arguable merit and is therefore frivolous, Marquez's motion for leave to proceed IFP on appeal is DENIED, and his appeal is DISMISSED as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997); *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2.