

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

No. 16-41598
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 27, 2017
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

ZACARIAS MONCIVAIS,

Defendant–Appellant.

Appeals from the United States District Court
for the Southern District of Texas
No. 2:08-CR-318-15

Before SMITH, WIENER, and HAYNES, Circuit Judges.

PER CURIAM:*

Zacarias Moncivais, federal prisoner #42255-279, seeks to proceed *in*

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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forma pauperis (“IFP”) on appeal of the denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence based on Amendment 782 to the Sentencing Guidelines. After implicitly determining that Moncivais was eligible for a § 3582(c)(2) reduction, the district court denied the motion based on its consideration of the 18 U.S.C. § 3553(a) factors, including Moncivais’s criminal history and the seriousness of the instant offense. *See Dillon v. United States*, 560 U.S. 817, 826–27 (2010).

By moving to proceed IFP in this court, Moncivais challenges the district court’s certification that his appeal is not in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry “is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous).” *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citations omitted).

We review the denial of Moncivais’s § 3582(c)(2) motion for an abuse of discretion. *See United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009). At most, Moncivais merely expresses his disagreement with the balancing of the § 3553(a) factors, which is insufficient to show an abuse of discretion. *See id.*

Moncivais has failed to demonstrate that his appeal involves legal points that are not frivolous. *See Howard*, 707 F.2d at 220. Accordingly, the motion to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See 5TH CIR. R. 42.2*. Moncivais’s motions for appointment of counsel and for leave to file an amended brief are DENIED.