

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

No. 17-40828
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 30, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ERICK OCHOA-RODRIGUEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:12-CR-1824-1

Before ELROD, HAYNES, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Erick Ochoa-Rodriguez, federal prisoner # 26617-379, was convicted of two marijuana-related charges and was sentenced to serve 115 months in prison and a four-year term of supervised release. Now, he moves this court for authorization to proceed in forma pauperis (IFP) on appeal from the district court's denial of his 18 U.S.C. § 3582(c)(2) motion. We will not grant the motion unless he shows that he has an arguable claim and that his appeal is thus

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); *United States v. Boutwell*, 896 F.2d 884, 889-90 (5th Cir. 1990) (one-judge order); *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).

Our review of the record shows no abuse of discretion in connection with the district court's denial of Ochoa-Rodriguez's motion. *See United States v. Henderson*, 636 F.3d 713, 717 (5th Cir. 2011). Instead, this review shows that the district court acted properly by first determining that Ochoa-Rodriguez qualified for a reduction and then weighing the 18 U.S.C. § 3553(a) factors to decide whether to exercise its discretion to grant this adjustment. *See Dillon v. United States*, 560 U.S. 817, 826-27 (2010). Ochoa-Rodriguez has not shown that this appeal is taken in good faith. *See Baugh*, 117 F.3d at 201-02; *Boutwell*, 896 F.2d at 889-90; *Howard*, 707 F.2d at 220. Accordingly, his IFP motion is DENIED, and this appeal is DISMISSED AS FRIVOLOUS.