

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

United States Court of Appeals
Fifth Circuit

FILED

March 25, 2020

Lyle W. Cayce
Clerk

No. 19-20634
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ESNORALDO DE JESUS POSADA-RIOS, also known as Juan Francisco
Perez, also known as Hector Fuentes,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:92-CR-137-2

Before BARKSDALE, HIGGINSON, and DUNCAN, Circuit Judges.

PER CURIAM:*

Proceeding *pro se*, Esnoraldo de Jesus Posada-Rios, federal prisoner # 60112-079, challenges the denial of two of his 18 U.S.C. § 3582(c)(2) motions for reduction of the concurrent life sentences imposed following his convictions in 1993 for: conspiracy to participate in a racketeering enterprise, in violation of 18 U.S.C. § 1962(d); participation in a racketeering enterprise, in violation

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

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of 18 U.S.C. § 1962(c); and conspiracy to possess, with intent to distribute, cocaine, in violation of 21 U.S.C. §§ 841(b)(1)(A) and 846. The denial of a § 3582(c)(2) motion is reviewed for abuse of discretion generally; but whether the district court had authority to reduce a sentence under § 3582(c)(2) is reviewed *de novo*. *United States v. Morgan*, 866 F.3d 674, 675 (5th Cir. 2017) (citations omitted).

The district court determined correctly that Amendments 782 (lowering drug-related base offense levels) and 788 (applying Amendment 782 retroactively) did not lower Posada's Sentencing Guidelines sentencing range because, although Amendment 782 reduced his base offense level by two levels, his total offense level remained unchanged by the amendment. *See* 18 U.S.C. § 3582(c)(2); U.S.S.G. § 1B1.10(a)(1); U.S.S.G. App. C, amend. 782; *Morgan*, 866 F.3d at 675. And, Amendment 599 (clarifying when defendants sentenced for federal firearm offenses may receive weapon enhancements for other offenses) is not implicated by his sentence because he was not convicted of an offense under 18 U.S.C. § 924(c) (prohibiting, *inter alia*, firearm possession during a drug transaction). *See* U.S.S.G. App. C, amend. 599; *United States v. Dixon*, 273 F.3d 636, 643–44 (5th Cir. 2001).

AFFIRMED.