

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

United States Court of Appeals
Fifth Circuit

FILED

June 4, 2020

Lyle W. Cayce
Clerk

No. 19-40375
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DARRYL WAYNE TYSON, JR.,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:12-CR-143-1

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Darryl Wayne Tyson, Jr., federal prisoner # 20129-078, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for a reduction of his 135-month sentence. His sentence was imposed following entry of a guilty plea to a charge of conspiracy to possess with intent to distribute cocaine base and was based on a Federal Rule of Criminal Procedure

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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11(c)(1)(C) agreement (Type-C agreement) in which the parties agreed that a sentence of 135 months was appropriate.

On appeal, Tyson contends that, based on *Hughes v. United States*, 138 S. Ct. 1765 (2018), his Type-C agreement does not preclude a reduction of his sentence under § 3582(c)(2); that the district court's implicit determination that it did not have authority to reduce his sentence below the amended guidelines range was inconsistent with U.S.S.G. § 1B1.10; and that the district court erred in concluding that it was not bound under the Type-C agreement to reduce his sentence. We review the district court's denial of Tyson's § 3582(c)(2) motion for an abuse of discretion and review the court's interpretation of the Guidelines de novo and its findings of fact for clear error. *United States v. Henderson*, 636 F.3d 713, 717 (5th Cir. 2011).

Even assuming, arguendo, that Tyson's Type-C agreement does not preclude a sentence reduction, *see Hughes*, 138 S. Ct. at 1775-76, 1770, he is still ineligible for relief because his sentence cannot be further reduced. Tyson's original sentence (135 months) is at the bottom of the amended sentencing guidelines range (135 to 168 months). *See* U.S.S.G., App. C., Amend. 782; U.S.S.G. § 2D1.1; U.S.S.G. Ch. 5, Pt. A (Sentencing Table). Section 3582(c)(2) makes clear that to be eligible for a sentence reduction, the requested reduction must be "consistent with applicable policy statements issued by the Sentencing Commission," and the policy statement set forth in U.S.S.G. § 1B1.10 does not permit a reduction in sentence when, as here, the defendant's original sentence is at the bottom of the amended sentencing range unless the defendant received a below-guidelines sentence based on substantial assistance. *See* § 1B1.10(b)(2)(A), (B); *United States v. Contreras*, 820 F.3d 773, 775 (5th Cir. 2016). Tyson does not assert that his sentence was reduced based on substantial assistance. The district court did not abuse its

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discretion in denying Tyson's § 3582(b)(2) motion, so its judgment is
AFFIRMED.