

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-5523  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

WILLIAM ROY STRIPLING,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(6:91-CR-8(02))

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(March 29, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Stripling was convicted and sentenced on his guilty plea to a drug offense. He did not appeal. Instead, he moved under 18 U.S.C. § 3742 to correct his sentence challenging the district court's imposition of a two-level increase in his base offense level pursuant to United States Sentencing Guidelines § 2D1.1(b)(1). He also moved for modification of his sentence under 18 U.S.C. § 3582(c)(2) contending that the amendment to the

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

sentencing guidelines effective November 1, 1992, awarding defendants a three-level reduction for acceptance of responsibility, should have been retroactively applied to his case. The district court denied both motions and Stripling appeals. We affirm.

Appellant's motion under § 3742 is unauthorized. That section establishes a right to appeal a sentence imposed under the guidelines and sets the standards for review. It does not authorize a post-judgment motion filed beyond the time for taking a direct appeal to challenge the sentence.

Section 3582(c)(2) does allow a defendant to move for reduction of sentence where the sentencing range has, subsequent to his sentencing, been lowered by the Sentencing Commission. Appellant was sentenced on July 31, 1991, and the amendment to § 3E1.1 was effective on November 1, 1992. The amended version of the Guideline does not, however, include the amendment to § 3E1.1 as one that is to have retroactive application. See § 1B1.10(a) and (d), p.s. (Nov. 1992). In United States v. Windham, 991 F.2d 181 (5th Cir.), cert. denied, 114 S. Ct. 444 (1993), this Court noted that "guidelines changes ought not generally be applied to cases in which the defendant was sentenced by the district court before the amendment took place." That rule is applicable to this Defendant.

AFFIRMED.