

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7137
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN HENRY TOPSY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-C-91-303-01
- - - - -
(March 24, 1994)

Before KING, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:*

Following amendment 459 to the Sentencing Guidelines and pursuant to 18 U.S.C. § 3582(c)(2), federal prisoner John Henry Topsy moved for an additional reduction in sentence for acceptance of responsibility. Amendment 459, however, does not operate retroactively. United States v. Crain, No. 92-3869, slip op. at 2 (5th Cir. June 22, 1993) (unpublished). Topsy's motion is without merit.

We may not consider the merits of Topsy's arguments

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

regarding the quantity and nature of the cocaine base and jurisdiction because such issues do not come within the scope of a § 3582(c)(2) motion. Additionally, the jurisdictional issue was improperly raised for the first time in the reply brief. Knigheten v. Commissioner, 702 F.2d 59, 60 & n.1 (5th Cir.), cert. denied, 464 U.S. 897 (1983). We do note, however, the general rules that guilty pleas waive prior defects and that state and federal courts have concurrent jurisdiction over drug offenses. Tollett v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602, 36 L. Ed. 2d 235 (1973); Peyote Way Church of God, Inc. v. Thornburgh, 922 F.2d 1210, 1218 (5th Cir. 1991).

Topsy presents no issue of arguable merit. His appeal is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. See 5th Cir. R. 42.2.

APPEAL DISMISSED.