

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7753

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EVERETT HATCHER,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Mississippi
(CR-1:93-00090-B-D)

(September 2, 1994)

Before GARWOOD, JOLLY and STEWART, Circuit Judges.*

PER CURIAM:

Defendant-appellant Everett Hatcher, Jr., (Hatcher) appeals the district court's denial of his motion for reduction of sentence under 18 U.S.C. § 3582(c)(2) based on the retroactivity of amendment 488 of the Sentencing Guidelines. Hatcher's original sentence had been imposed following his conviction pursuant to a plea bargain under which certain other counts against him had been

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

dismissed. Hatcher pointed out in his motion, and the government in its opposition essentially confirmed, what his guideline range would have been had the amendment been in effect at the time of his sentencing. The district court denied the motion, noting, *inter alia*, that it had considered the motion, and the reasons given in support of it, and the government's opposition, and that the facts in the case and Hatcher's criminal history did not make any reduction in sentence appropriate. This Court has recently held that whether to reduce a sentence on the basis of a retroactive amendment to the guidelines is within the discretion of the district court under 18 U.S.C. § 3582(c)(2) and § 1B1.10 of the guidelines. *United States v. Shaw*, No. 94-50186, slip op. 5974, 5976 (5th Cir. Aug. 10, 1994). It is evident from the record that the district court considered the factors set forth in 18 U.S.C. § 3553(a) and the sentence that it would have originally imposed had the guidelines as amended been in effect at that time. The record as a whole makes plain that the district court did not abuse its discretion and considered the required factors. Accordingly, the district court's order is

AFFIRMED.