

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50371
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOE CLINTON SEGLER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-88-CR-128
- - - - -

March 6, 1996

Before DAVIS, BARKSDALE and DeMOSS, Circuit Judges.

PER CURIAM:*

Joe Clinton Segler appeals from the district court's order denying his motion to reduce his prison term, filed pursuant to 18 U.S.C. § 3582(c)(2). He argues that his 1989 sentence for manufacturing methamphetamine, in violation of 21 U.S.C. § 841(a)(1), would have been lower under a retroactive 1993 amendment to the Sentencing Guidelines, under which "mixtures or substances" is given a different meaning. He contends that the

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

district court abused its discretion by applying the 1994 edition of the Sentencing Guidelines to his 1989 sentence, thus violating his rights under the Ex Post Facto Clause. Although Segler is correct that the district court erred, the court's error is harmless because, even if the correct guidelines were applied, Segler's guideline sentencing range would be above the statutory maximum sentence. See United States v. Montoya-Ortiz, 7 F.3d 1171, 1182 (5th Cir. 1993). On that basis, the district court's denial of the motion is

AFFIRMED.