

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 96-30032

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSCAR NUNEZ,

Defendant-Appellant.

Appeal from the United States District Court
For the Eastern District of Louisiana
(90 CR 333 M)

July 23, 1996

Before HIGGINBOTHAM, DUHÉ, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Oscar Nunez appeals the district court's denial of his motion to reduce his term of imprisonment under 18 U.S.C. § 3582(c)(2). Nunez argues that the district court abused its discretion in dismissing his § 3852(c)(2) motion because Amendment 439, which clarified § 1B1.3 of the Sentencing Guidelines, should be applied retroactively to reduce his term of imprisonment. Because

* Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Amendment 439 is not listed as having retroactive application under § 1B1.10(c) of the Guidelines, Nunez may not obtain relief under § 3852(c)(2). See *United States v. Pardue*, 36 F.3d 429, 430 (5th Cir. 1994), cert. denied, ___ U.S. ___, 115 S. Ct. 1969, 131 L. Ed. 2d 858 (1995); *United States v. Miller*, 903 F.2d 341, 349 (5th Cir. 1990).

AFFIRMED.