

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-40234  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICHARD LARRY BARANIUK,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-94-CR-58-1  
- - - - -

December 10, 1996

Before WIENER, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Richard Larry Baraniuk, federal prisoner # 63892-079, appeals the district court's denial of his motion for modification of the imposed term of imprisonment under 18 U.S.C. § 3582(c)(2). Baraniuk argues that his sentence should be reduced under Amendment 518 to U.S. Sentencing Guideline § 2D1.1 to exclude the excess moisture in the marijuana and that his

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

sentence should be reduced under Amendment 484 to § 2D1.1 to exclude the weight of the packaging materials of each bundle of marijuana. Because Amendment 518 is not listed as retroactive in § 1B1.10(c) of the Guidelines, Baraniuk's claim concerning Amendment 518 is not cognizable under § 3582(c)(2). See United States v. Shaw, 30 F.3d 26, 28-29 (5th Cir. 1994). Because Amendment 484, effective November 1, 1993, was in effect when Baraniuk was sentenced in August 1994, his claim concerning Amendment 484 is not cognizable under § 3582(c)(2). Id. at 29.

Baraniuk's appeal is without arguable merit and is thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2. Baraniuk is cautioned that any future frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. Baraniuk is cautioned further to review any pending appeals to ensure that they do not raise arguments that are frivolous.

APPEAL DISMISSED; SANCTION WARNING ISSUED.