

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-41464
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FAHIM AHMAD NASHEED,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:97-CR-30-1
- - - - -

August 22, 2000

Before KING, Chief Judge, and POLITZ and WIENER, Circuit Judges.

PER CURIAM:*

Fahim Ahmad Nasheed, federal prisoner # 26789-044, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for a reduction of sentence. Nasheed argues that he is entitled to a two-level reduction in sentence under U.S.S.G. § 5C1.2 because he meets the five criteria listed at § 5C1.2(1)-(5). He also argues that he was denied due process because the district court did not afford him the opportunity to present evidence or otherwise refute Special Agent Garret Floyd's affidavit, in which Special Agent Floyd explained that Nasheed did not truthfully

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

provide all information and evidence with regard to his offense. See § 5C1.2(5).

Although Nasheed's notice of appeal presents some questions concerning its timeliness, the issue he raises in his motion and on appeal is frivolous and remand would be futile. See *United States v. Alvarez*, 210 F.3d 309, 310 (5th Cir. 2000). If a defendant has been sentenced to a term of imprisonment based on a sentencing range that subsequently has been lowered by the Sentencing Commission, the district court may reduce the term of imprisonment pursuant to a § 3582(c)(2) motion. Nasheed was convicted and sentenced in 1997, subsequent to the enactment and effective date of § 5C1.2. See U.S.S.G. Appendix C, amendment 509. Thus, he has failed to identify an amendment to the Sentencing Guidelines that subsequently lowered his sentencing range. *Alvarez*, 210 F.3d at 310. Accordingly, his appeal is DISMISSED for lack of jurisdiction. See *id.*