

February 18, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-50906  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JIMMY DAVID CLARK, also known as Shane Lee Allen,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. MO-93-CR-61-ALL  
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Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:\*

Jimmy David Clark, federal prisoner # 57808-080, seeks leave to proceed in forma pauperis ("IFP") in his appeal from the district court's order denying his motion to modify his sentence pursuant to 18 U.S.C. § 3582(c). To obtain leave to proceed IFP on appeal, Clark must demonstrate both financial eligibility and that he will present a non-frivolous issue on appeal. See Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Clark's motion to modify his sentence is not authorized under 18 U.S.C. § 3582(c)(2). That section permits a defendant to move for modification of his sentence if the sentencing range relied upon by the district court is subsequently lowered by an amendment to the Sentencing Guidelines. See 18 U.S.C. § 3582(c)(2). The amendment relied upon by Clark was enacted almost four years before he was sentenced. Consequently, 18 U.S.C. § 3582(c)(2) is inapplicable.

Because Clark has failed to show that he will raise a non-frivolous issue on appeal, his motion to proceed IFP on appeal is DENIED. See Carson, 689 F.2d at 586. Because the appeal is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED.