

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 7, 2020

Lyle W. Cayce
Clerk

No. 20-10281
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

AUDIE EUGENE COUCH,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:11-CR-61-1

Before HIGGINBOTHAM, SOUTHWICK, and WILLETT, Circuit Judges.

PER CURIAM:*

Audie Eugene Couch, federal prisoner # 42886-177, has applied for leave to proceed in forma pauperis (IFP) in this appeal from the denial of his motion under 18 U.S.C. § 3582(c)(2) for a sentence reduction in light of Amendment 782 to the Sentencing Guidelines. By moving to proceed IFP in this court, Couch challenges the district court's denial of his motion for leave to proceed IFP on appeal. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Couch

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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must demonstrate that he will present a nonfrivolous issue for appeal. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982).

The Supreme Court has prescribed a two-step inquiry in considering a § 3582(c)(2) motion. *Dillon v. United States*, 560 U.S. 817, 826-27 (2010). Before it considers a defendant's post-conviction conduct and the statutory sentencing factors, the district court must first determine whether the defendant is eligible for a sentence reduction and the extent of the reduction authorized under U.S.S.G. § 1B1.10. *Id.*

Couch pleaded guilty to possessing 49 grams of methamphetamine, and he was found responsible at sentencing for 60.1 kilograms. His base-offense level of 38 was not lowered by Amendment 782. *See* U.S.S.G. § 2D1.1(c)(1) (2014). The district court did not err in determining that Couch is ineligible for a sentence reduction. *See* U.S.S.G. § 1B1.10(a)(2)(B); *see* U.S.S.G. § 1B1.10, p.s., comment. (n.1(A)).

Because Couch has not presented a nonfrivolous issue for review, the request for leave to proceed IFP is DENIED. The appeal is DISMISSED AS FRIVOLOUS. *See* 5TH CIR. R. 42.2; *Baugh*, 117 F.3d at 202.