

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-30835
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

AMOS J. CONDE, JR.,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 92-CR-451
- - - - -
February 24, 1997

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Amos J. Conde, Jr., federal prisoner # 23213-034, 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). Conde argues that his offense level should be reduced two levels under Amendment 515 to U.S.S.G. § 2D1.1, his fine exceeds his ability to pay, and he should receive credit for time that he spent under house arrest prior to sentencing. Because Amendment 515 is not listed as retroactive in § 1B1.10(c) of the Guidelines, Conde's

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

claim concerning Amendment 515 is not cognizable under § 3582(c)(2). See United States v. Miller, 903 F.2d 341, 349 (5th Cir. 1990). There is no authority to modify Conde's fine or to credit him with time spent under house arrest under § 3582(c). See United States v. Lopez, 26 F.3d 512, 515 (5th Cir. 1994).

Conde'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. Conde is cautioned that any future frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. Conde is cautioned further to review any pending appeals to ensure that they do not raise arguments that are frivolous.

APPEAL DISMISSED; SANCTION WARNING ISSUED.