

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 21, 2021

Lyle W. Cayce
Clerk

No. 20-10648
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JAVIER ROSALES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:09-CR-160-3

Before CLEMENT, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

In 2010, Javier Rosales, federal prisoner # 39033-177, was sentenced to 324 months of imprisonment after pleading guilty to conspiracy to distribute at least 50 grams of methamphetamine. He now appeals the denial of the 18 U.S.C. § 3582(c)(2) motion he filed in 2020 and the denial of his

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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subsequent motion for reconsideration. He argues that the district court abused its discretion in denying his motion to reduce his sentence pursuant to Amendment 782, and he contends that the district court improperly reweighed the evidence before it at the original sentencing to offset the 62-month applicable reduction.

We pretermitt any issues concerning the timeliness of Rosales's motion for reconsideration and notice of appeal; the Government has not raised such challenges, and any untimeliness would not present a jurisdictional impediment. *See United States v. Martinez*, 496 F.3d 387, 388-89 (5th Cir. 2007).

The district court concluded, as a matter of discretion, that Rosales should not receive a reduction in sentence. Both in its original order and the order denying the motion for reconsideration, the court explained the reasons it would not reduce Rosales's sentence, which focused on the seriousness of Rosales's conduct. The district court reviewed all the relevant facts and materials, considered the request in light of the 18 U.S.C. § 3553(a) factors, and declined to grant a reduction. The district court did not abuse its discretion in denying Rosales's § 3582(c)(2) motion or his motion for reconsideration. *See United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009); *United States v. Rabhan*, 540 F.3d 344, 346-47 (5th Cir. 2008).

AFFIRMED.