

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

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**January 12, 2006**

**Elisabeth A. Shumaker**  
**Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH EUGENE WRIGHT,

Defendant - Appellant.

No. 05-6203  
(D.C. No. 91-CR-51-R)  
(W.D. Okla.)

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**ORDER AND JUDGMENT\***

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Before **KELLY, O'BRIEN**, and **TYMKOVICH**, Circuit Judges.\*\*

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Defendant-Appellant Kenneth Eugene Wright appeals the district court's denial of his motion under 18 U.S.C. § 3582(c)(2) to modify his sentence. Mr. Wright was convicted of possession of cocaine base with intent to distribute, 21 U.S.C. § 841(a)(1), and was sentenced to 292 months imprisonment and four years supervised release. He appealed his sentence and it was affirmed. United

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

States v. Wright, No. 91-6349, 1993 WL 204158 (10th Cir. June 7, 1993)

(unpublished). His certiorari petition to the Supreme Court was denied. Wright v. United States, 510 U.S. 927 (1993). A 28 U.S.C. § 2255 motion was dismissed as untimely.

Mr. Wright contends that Amendment 591 of the Sentencing Guidelines applies to his sentence. The district court rejected this contention. We review the district court's determination de novo. United States v. Smartt, 129 F.3d 539, 540 (10th Cir. 1997). Section 3582(c)(2) allows the district court to reduce a term of imprisonment if the defendant's sentence was based on a sentencing range that "subsequently has been lowered by the Sentencing Commission." Smartt, 129 F.3d at 540 (internal quotations and citations omitted). While § 1B1.10 gives Amendment 591 retroactive effect, the Amendment does not apply to Mr. Wright's sentence. See U.S.S.G. § 1B1.10(c). Mr. Wright's interpretation of the scope of that amendment is in error. Amendment 591 amends § 1B1.1(a), § 1B1.2(a), the Commentary to § 1B1.2 and § 2D1.2, and Appendix A (Statutory Index). See id. Mr. Wright was sentenced under § 2D1.1, not under § 2D1.2. As such, Amendment 591's changes to § 2D1.2 do not affect Mr. Wright's sentence.

AFFIRMED. Mr. Wright's motion to proceed in forma pauperis is DENIED.

Entered for the Court

Paul J. Kelly, Jr.

Circuit Judge