

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

No. 15-50583
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 7, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KEITH O. COBB,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:93-CR-96-2

Before CLEMENT, ELROD, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Keith O. Cobb, federal prisoner # 60806-080, seeks leave to proceed in forma pauperis (IFP) on appeal from the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence based on Amendments 782 and 788 to the Sentencing Guidelines. By moving to proceed IFP, Cobb is challenging the district court's certification that his appeal was not taken in good faith because it is frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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First, Cobb challenges several factual statements made by the district court in giving reasons for denying the instant § 3582(c)(2) motion. The factual statements made by the district court are grounded in facts recited in the presentence report. Cobb's challenges to the facts used to determine his original sentence are unavailing insofar as a § 3582(c)(2) proceeding is not the appropriate vehicle to raise issues related to the original sentencing. *See United States v. Hernandez*, 645 F.3d 709, 712 (5th Cir. 2011); *United States v. Whitebird*, 55 F.3d 1007, 1011 (5th Cir. 1995).

Second, Cobb contends the district court's denial of relief indicates that it was blind to the amendments' purpose of reducing the overpopulation of the federal prison system. However, in denying relief, the district court referenced the 18 U.S.C. § 3553(a) factors, and its order reflects that it gave due consideration to Cobb's motion as a whole. Accordingly, the district court did not abuse its discretion when it refused to grant Cobb a reduction in his sentence. *See United States v. Henderson*, 636 F.3d 713, 717 (5th Cir. 2011); *Whitebird*, 55 F.3d at 1010.

Cobb has failed to show that he will raise a nonfrivolous issue on appeal. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, his IFP motion is DENIED. Additionally, because this appeal is frivolous, it is DISMISSED. *See 5TH CIR. R. 42.2.*