

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

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No. 17-40298  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

March 6, 2018

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ISRAEL CARMENATE,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:07-CR-1217-2

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Before HIGGINBOTHAM, JONES, and COSTA, Circuit Judges.

PER CURIAM:\*

Israel Carmenate, federal prisoner # 82363-179, was convicted of one count of conspiracy to possess with intent to distribute cocaine and one count of possession with intent to distribute cocaine and was sentenced to concurrent sentences of 160 months in prison and concurrent five-year terms of supervised release on each count. After granting Carmenate's 18 U.S.C. § 3582(c)(2) motion based on Amendment 782 to the Sentencing Guidelines, the district

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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court reduced his sentence to 144 months. He now moves for leave to proceed in forma pauperis (IFP) from the denial of his second § 3582(c)(2) motion based on Amendment 782. The district court found that a further sentence reduction was not warranted and certified that Carmenate's appeal was not taken in good faith.

By moving to proceed IFP, Carmenate challenges the district court's certification that his appeal was not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into a litigant's good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citations omitted).

Carmenate's appeal does not involve any "legal points arguable on their merits." *Howard*, 707 F.2d at 220 (internal quotation marks and citations omitted). The district court gave due consideration to the arguments Carmenate presented in favor of his second motion and implicitly considered the 18 U.S.C. § 3553 factors when denying the motion. *See United States v. Henderson*, 636 F.3d 713, 717 (5th Cir. 2011); *United States v. Whitebird*, 55 F.3d 1007, 1010 (5th Cir. 1995).

Accordingly, Carmenate's motion to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.