

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

February 24, 2006

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

vs.

JAMES CULP,

Defendant - Appellant.

No. 05-3283
(D.C. No. 97-CR-40005-SAC)
(D. Kan.)

ORDER AND JUDGMENT*

Before **KELLY, MCKAY, and LUCERO**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

James Culp, an inmate appearing pro se, seeks to appeal from the district court's denial of his motion for a reduction of sentence pursuant to 18 U.S.C.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The 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.

§ 3582. The district court held that it lacked jurisdiction to consider Mr. Culp's motion, and to the extent it sought relief pursuant to 28 U.S.C. § 2255, transferred it to the court of appeals as a second or successive motion. Doc. 312 at 6. Mr. Culp urges the court to remand and instruct the district court to apply United States v. Booker, 543 U.S. 220 (2005), retroactively on re-sentencing.

After a jury trial, Mr. Culp was convicted of conspiring to distribute cocaine, 21 U.S.C. § 846, and sentenced to 151 months imprisonment. This court affirmed the judgment. United States v. Culp, 188 F.3d 519 (10th Cir. 1999) (unpublished). A check of the district court docket sheet reveals the following. On October 6, 2000, Mr. Culp filed a motion pursuant to 28 U.S.C. § 2255. (Doc. 253). The district court denied Mr. Culp relief on February 7, 2001. (Doc. 263). Mr. Culp subsequently filed a motion pursuant to Rule 59(e), which the district court treated as a successive § 2255 motion and transferred it to this court. (Doc. 270). We denied leave to file a second or successive § 2255 motion. (Doc. 272). On April 11, 2005, Mr. Culp filed the instant motion. (Doc. 308). In a memorandum and order, the district court determined that it had no jurisdiction under 18 U.S.C. § 3582(c), and also transferred the motion to this court. (Doc. 312). On September 22, 2005, this court denied Mr. Culp authorization to file a second or successive § 2255 motion and dismissed the matter. Mr. Culp filed this appeal from the district court's memorandum and order on November 3, 2005. He

challenges the district court's determination that it did not have jurisdiction under § 3582(c)(2).

The district court plainly lacked jurisdiction to reduce Mr. Culp's sentence. United States v. Moreno, 421 F.3d 1217, 1220 (11th Cir. 2005) (Booker is inapplicable to § 3582(c)(2) motions). To the extent Mr. Culp seeks a ruling on a second or successive § 2255 motion, this Court already provided him with one in its September 2005 order.

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge