

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-13619
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT OCT 31, 2006 THOMAS K. KAHN CLERK

D. C. Docket No. 96-00041-CR-7-HL

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LYNDON WILLIAMS,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia

(October 31, 2006)

Before TJOFLAT, BARKETT and HULL, Circuit Judges.

PER CURIAM:

Lyndon Williams, a federal prisoner proceeding pro se, appeals the denial of his post-judgment motion to modify or reduce sentence, filed pursuant to 18 U.S.C.

§ 3582(c)(2), and for reconsideration of the district court's denial of his § 3582 motion, which he styled as a Fed.R.Civ.P. 59(e) motion to alter or amend judgment.

As a preliminary matter, we reject the government's argument that we lack jurisdiction to decide this appeal due to Williams's failure to perfect a timely appeal of the denial of his § 3582 motion. We remanded Williams's case to the district court for a determination of excusable neglect or good cause for Williams's untimely filing of his notice of appeal, and the district court found that Williams's failure to file a timely notice of appeal was the result of excusable neglect and granted the motion for extension of time. Accordingly, we proceed to consider the merits of the Williams's appeal.

Williams argues that United States v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), provided grounds for reducing his sentence under 18 U.S.C. § 3582(c)(2) because Booker held that the mandatory sentencing guidelines were unconstitutional. However, in United States v. Moreno, 421 F.3d 1217, 1220 (11th Cir. 2005), cert. denied, 126 S.Ct. 1643 (2006), we held that because Booker is a Supreme Court decision and not a retroactively applicable guideline amendment created by the Sentencing Commission, Booker is inapplicable to § 3582(c)(2) motions.

Having reviewed the record, we discern no reversible error.

AFFIRMED.