

June 21, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 05-50656  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE TEPEZANO-AVILA,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:98-CR-301-ALL  
-----

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Jose Tepezano-Avila (Tepezano), federal prisoner # 85628-080, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion, wherein he argued that Amendment 668 to the Sentencing Guidelines should be applied to the calculation of his offense level under U.S.S.G. § 2D1.1(a)(3).

Amendments to the Sentencing Guidelines may not be applied retroactively upon a motion under § 3582(c)(2) unless they are specifically set forth in U.S.S.G. § 1B1.10(c). See U.S.S.G.

---

\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

§ 1B1.10(a), p.s. (Nov. 2005). Amendment 668 is not listed in § 1B1.10(c) and therefore may not be applied retroactively under Tepezano's motion. See United States v. Drath, 89 F.3d 216, 218 (5th Cir. 1996) (amendment not listed in § 1B1.10(c) "cannot be given retroactive effect in the context of a § 3582(c)(2) motion"). Accordingly, the district court did not abuse its discretion when it denied Tepezano's § 3582(c)(2) motion.

AFFIRMED.