

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

United States Court of Appeals
Fifth Circuit

FILED

November 3, 2010

Lyle W. Cayce
Clerk

No. 08-10360

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

STEVE RAY HICKMAN,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:93-CR-10-9

Before WIENER, PRADO, and OWEN, Circuit Judges.

PER CURIAM:*

Steve Ray Hickman, federal prisoner # 23249-077, pleaded guilty in 1993 to distributing less than five grams of cocaine base (crack cocaine) within 1,000 feet of an elementary school and was sentenced to 200 months of imprisonment. This court is now presented with Hickman's appeal from the district court's denial of his motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). He argues that the denial was improper because the district court erroneously believed that it was prevented from giving Hickman the benefit of the amended

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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guidelines based on the fact that he was sentenced as a career offender. Hickman also challenges the validity of the career offender guidelines.

Hickman “was not sentenced based on a sentencing range that was subsequently lowered by the Sentencing Commission.” *United States v. Anderson*, 591 F.3d 789, 791 & n.8 (5th Cir. 2009) (internal quotations and citation omitted). The district court was correct in concluding that Hickman was not eligible for a reduction under § 3582(c)(2). *See id.* at 790-92. The instant § 3582 motion is not a proper vehicle for Hickman’s argument regarding the career offender guidelines. *See United States v. Whitebird*, 55 F.3d 1007, 1011 (5th Cir. 1995).

The judgment of the district court is AFFIRMED. The Government’s motion for summary affirmance is GRANTED, and its alternate request for an extension of time in which to file a brief is DENIED. Hickman’s motion for appointment of counsel is also DENIED.