

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

United States Court of Appeals
Fifth Circuit

FILED

November 18, 2010

Lyle W. Cayce
Clerk

No. 08-10573

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ANTONIO T ALVAREZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:00-CR-124-1

Before REAVLEY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Antonio T. Alvarez, federal prisoner # 25864-177, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence following the recent amendments to the Sentencing Guidelines for crack cocaine offenses. In response to that motion, the Government argued that the motion should be denied based upon Alvarez's post-sentencing disciplinary convictions.

On appeal, Alvarez argues that the district court erred in considering his post-sentencing disciplinary record to deny his motion without providing him

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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with an opportunity to respond to that record. Even if we assume that Alvarez has shown error due to that lack of notice, there is no indication from the record or from Alvarez that any error by the district court rose to the level of harmful error. *See United States v. Mueller*, 168 F.3d 186, 189-90 (5th Cir. 1999).

Accordingly, the judgment of the district court is AFFIRMED.