

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

United States Court of Appeals
Fifth Circuit

FILED

November 12, 2010

No. 08-20447
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ANDRES AYALA ALLENDE,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:93-CR-312-3

Before REAVLEY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Andres Ayala Allende, federal prisoner # 60918-079, was convicted by a jury in 1994 of conspiracy to possess with intent to distribute in excess of 50 grams of cocaine base and of possession with intent to distribute in excess of 50 grams of cocaine base and aiding and abetting. The district court sentenced him to 292 months of imprisonment. The district court reduced the sentence in 1996 to 235 months following amendments to the Sentencing Guidelines imposing a maximum base offense level of 38 for drug offenses. Based on 2007 amendments

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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to the Sentencing Guidelines that lowered base offense levels for crack cocaine offenses, Ayala moved for a reduction pursuant to 18 U.S.C. § 3582(c)(2). The district court denied the motion on the basis that Ayala's base offense level remained 38 even with the amendments. Ayala now appeals, arguing that the district court had the authority in light of *United States v. Booker*, 543 U.S. 220 (2005), and its progeny to reduce his sentence notwithstanding the contrary policy statement set out in U.S.S.G. § 1B1.10.

We recently rejected materially indistinguishable arguments in *United States v. Dublin*, 572 F.3d 235, 236-39 (5th Cir.), *cert. denied*, 130 S. Ct. 517 (2009). Accordingly, the judgment of the district court is AFFIRMED.