

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

United States Court of Appeals
Fifth Circuit

FILED

January 29, 2010

Charles R. Fulbruge III
Clerk

No. 08-30855

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PERCY FRANKLIN,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:98-CR-207-10

Before JONES, Chief Judge, and DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Percy Franklin, federal prisoner # 01161-748, appeals from the district court's order denying him relief pursuant to 18 U.S.C. § 3582(c)(2) and the crack cocaine amendments to the Sentencing Guidelines. Franklin was convicted of conspiracy to distribute crack cocaine and powder cocaine.

Franklin contends that the district court erroneously found that his 20-year sentence was the minimum mandatory sentence for his offense because, he argues, the murders committed by the conspiracy were found not reasonably

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

foreseeable to him when he was sentenced. The Government contends that Franklin waived any entitlement to § 3582(c)(2) relief because the Federal Public Defender appointed to represent Franklin sat on the committee that determined Franklin was ineligible for such relief.

The Government's waiver argument is unavailing. Moreover, the district court's finding that Franklin previously had incurred a felony drug conviction raised his mandatory minimum sentence to 20 years of imprisonment. *See* 21 U.S.C. § 841(b)(1)(A)(iii). Because Franklin was sentenced to the minimum mandatory 20-year term, he was ineligible for an adjustment pursuant to the crack cocaine guidelines. *See* U.S.S.G. § 1B1.10, comment. (n.1)).

AFFIRMED.