

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

F I L E D

January 5, 2010

No. 08-40775
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MAURICE ANDRE PERRY

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:05-CR-17-ALL

Before HIGGINBOTHAM, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Maurice Andre Perry appeals the district court's limited grant of his motion for a sentence reduction. *See* 18 U.S.C. § 3582(c)(2). Perry contends that the district court erred by failing to afford him the opportunity to review and comment on the addendum to the presentence report (PSR) that was prepared in connection with his motion.

The Government does not dispute that Perry was entitled to an opportunity to review and comment on the PSR prior to the district court's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

ruling. *See United States v. Mueller*, 168 F.3d 186, 189 (5th Cir. 1999). We conclude that on this record, we cannot determine whether the district court considered the merits of the arguments raised in Perry's untimely motion for reconsideration, nor can we conclude that any error was harmless. *See id.*; *United States v. Andrews*, 390 F.3d 840, 846 & n.9 (5th Cir. 2004). Accordingly, we vacate the judgment of the district court and remand to permit the district court to consider the arguments asserted by Perry in his motion for reconsideration. We express no opinion on the disposition of Perry's motion on remand.

VACATED AND REMANDED.