

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

United States Court of Appeals  
Fifth Circuit

**FILED**

October 20, 2009

\_\_\_\_\_  
No. 08-41312  
Conference Calendar  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOE THOMAS TUCKER,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:91-CR-30-1  
\_\_\_\_\_

Before WIENER, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Appealing the judgment in a criminal case, Joe Thomas Tucker raises arguments that are foreclosed by *United States v. Dublin*, 572 F.3d 235, 236-39 (5th Cir. 2009), *petition for cert. filed* (Sept. 21, 2009) (No. 09-6657), which rejected the argument that *United States v. Booker*, 543 U.S. 220 (2005) applies in 18 U.S.C. § 3582(c)(2) proceedings and held that a district court may not reduce a sentence below the minimum provided in the amended Guidelines.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.