

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

United States Court of Appeals
Fifth Circuit

F I L E D

October 27, 2010

No. 08-50349
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EMILIANO CARRASCO MAGALLANEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:03-CR-66-1

Before JOLLY, GARZA, and STEWART, Circuit Judges.

PER CURIAM:*

Emiliano Carrasco Magallanez pleaded guilty to one count of conspiracy to possess crack cocaine with intent to distribute and was sentenced to serve 121 months in prison and a three-year term of supervised release. He appeals the district court's order denying his motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). According to Magallanez, the denial was improper because he was sentenced based on both crack and powder cocaine. Additionally, he argues that his sentence is flawed because neither the information nor the

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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plea agreement specified the amount of drugs involved with his offense. Magallanez moves this court for authorization to file a supplemental brief.

None of the arguments raised in this appeal suffices to show that the district court abused its discretion in connection with its denial of Magallanez's § 3582(c) motion. *United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009), *cert. denied*, 130 S. Ct. 3462 (2010). Insofar as Magallanez contends that he was sentenced based on both powder and crack cocaine, our review of the record refutes this assertion and supports the district court's determination that Magallanez was not entitled to the relief sought because his sentence was based on powder cocaine. The instant § 3582 motion is not a proper vehicle for Magallanez's additional challenge to his sentence. *United States v. Whitebird*, 55 F.3d 1007, 1011 (5th Cir. 1995). The judgment of the district court is AFFIRMED, and Magallanez's motion is DENIED.