

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

United States Court of Appeals
Fifth Circuit

FILED

November 5, 2010

No. 08-50999
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee

v.

DAMIDRICK DESHONE FEARCE,

Defendant–Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:07-CR-41-1

Before WIENER, PRADO, and OWEN, Circuit Judges.

PER CURIAM:*

Damidrick Deshone Fearce moves for leave to proceed in forma pauperis (IFP) on appeal from the district court’s denial of his 18 U.S.C. § 3582(c)(2) motion for a sentence reduction. Fearce’s IFP motion is construed as a challenge to the district court’s determination that his appeal was not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 199-202 (5th Cir. 1997).

Although Fearce argues that he is eligible for a sentence reduction and that the district court should consider several issues on resentencing, Fearce

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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does not challenge the district court's sole basis for denying his § 3582(c) motion—the court's determination that Fearce was not eligible for a sentence reduction because he had been sentenced to the statutory mandatory minimum sentence of 240 months. Fearce's failure to challenge the district court's legal analysis or its application in his case, "[i]n practical effect, . . . is the same as if he had not appealed that judgment." *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Although pro se briefs are afforded liberal construction, *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (per curiam), arguments must be briefed in order to be preserved. *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

Fearce has abandoned any challenge to basis of the district court's denial of his § 3582(c) motion. See *Brinkmann*, 813 F.2d at 748. Consequently, the appeal lacks any issue of arguable merit. See *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Fearce's IFP motion is DENIED and his appeal is DISMISSED as frivolous. See *Baugh*, 117 F.3d at 202; 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED.