

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

United States Court of Appeals
Fifth Circuit

FILED

October 20, 2009

No. 09-10110
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAMES EARL THOMAS, also known as Max, also known as Wino,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:03-CR-78-10

Before WIENER, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

James Earl Thomas, federal prisoner # 29807-177, was sentenced to 188 months in prison following his plea of guilty to conspiracy to possess with intent to distribute cocaine base (crack). Following amendments to the Sentencing Guidelines that lowered the offense levels for crack cocaine offenses, the district court granted a motion by Thomas pursuant to 18 U.S.C. § 3582(c)(2) and reduced his sentence to 151 months, at the bottom of the amended guidelines range. Thomas now appeals, challenging the limits on 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

discretion set forth in U.S.S.G. § 1B1.10 and arguing that the district court had the authority to impose an even lower sentence. The Government argues that the district court could not reduce Thomas's sentence further.

Thomas's arguments are foreclosed in light of our recent decision in *United States v. Dublin*, 572 F.3d 235, 236-39 (5th Cir. 2009), *petition for cert. filed* (Sept. 21, 2009) (No. 09-6657). Accordingly, the judgment of the district court is AFFIRMED.