

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

United States Court of Appeals
Fifth Circuit

FILED

November 2, 2010

Lyle W. Cayce
Clerk

No. 09-10171
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SWANY D. DAVENPORT,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:92-CR-289-1

Before DENNIS, CLEMENT, and ELROD, Circuit Judges.

PER CURIAM:*

Swany D. Davenport seeks appointment of counsel to appeal the district court's order granting him a sentencing reduction pursuant to 18 U.S.C. § 3582(c)(2) based on retroactive amendments to the Sentencing Guidelines covering crack cocaine offenses. Davenport's sentence was reduced from 360 months to 292 months, and the district court opined that it would have considered a greater reduction if it was so authorized.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Davenport contends that the holding of *United States v. Booker*, 543 U.S. 220 (2005), applies to § 3582(c)(2) proceedings and that the district court erred when it determined that it was constrained in the amount of a reduction it could award. Davenport's argument has been rejected and is foreclosed. *See Dillon v. United States*, 130 S. Ct. 2683, 2692 (2010); *United States Dublin*, 572 F.3d 235, 236-39 (5th Cir.), *cert. denied*, 130 S. Ct. 517 (2009). Because Davenport's appeal "lacks an arguable basis either in law or in fact," the appeal is frivolous. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738, 744 (1967)). Davenport has already received the greatest sentence reduction the district court could have granted him. Accordingly the motion for appointment of counsel is denied and the appeal is dismissed. *See* 5TH CIR. R. 42.2.

APPEAL DISMISSED; MOTION DENIED.