

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

United States Court of Appeals
Fifth Circuit

FILED

April 20, 2010

Lyle W. Cayce
Clerk

No. 09-30107

Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GEORGE BENNETT,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:06-CR-281-1

Before SMITH, PRADO, and HAYNES, Circuit Judges.

PER CURIAM:*

George Bennett, federal prisoner # 29939-034, appeals the district court's ruling that he was ineligible for a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(2) based on the amendments to the crack cocaine Guideline. Bennett's appeal waiver does not bar this appeal. *See United States v. Cooley*, 590 F.3d 293, 296-97 (5th Cir. 2009). Although he argues that he was eligible for such a reduction, when a defendant such as Bennett is "subject to a statutory minimum sentence above the upper end of his guideline range, even if the district court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

departs downwardly from that minimum under a statutory exception, 18 U.S.C. § 3582(c)(2) provides no authority to the district court to later modify the sentence based on amendments to the guideline range.” *United States v. Carter*, 595 F.3d 575, 581 (5th Cir. 2010).

AFFIRMED.