

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

United States Court of Appeals
Fifth Circuit

FILED

September 2, 2009

No. 09-40149
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KELVIN BERNARD WORTH

Defendant - Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:05-CR-3-3

Before HIGGINBOTHAM, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Kelvin Worth was sentenced to 200 months in prison following his plea of guilty to possession with intent to distribute and distribution of crack cocaine in violation of 21 U.S.C. § 841. Following amendments to the Sentencing Guidelines that lowered the base offense levels for crack cocaine offenses, the district court granted Worth's motion for sentence reduction under 18 U.S.C. § 3582(c)(2) and reduced Worth's sentence to 151 months, the minimum sentence

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

under the amended Guidelines. Worth appeals and challenges the limits on the district court's discretion set forth in U.S.S.G § 1B1.10 and argues the district court had the authority to impose a sentence below the minimum in light of the Supreme Court's ruling in *United States v. Booker*.¹ The Government has moved for summary affirmance, asserting that the district court could not reduce Worth's sentence further. Alternatively, the Government moves for an extension of time to file a brief.

Worth's arguments fail in light of our recent decision in *United States v. Dublin*.² Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED as moot.

¹ 543 U.S. 220 (2005).

² 572 F.3d 235 (5th Cir. 2009).