

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

United States Court of Appeals
Fifth Circuit

FILED

February 18, 2010

Charles R. Fulbruge III
Clerk

No. 09-40539

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSEPH THOMAS, JR.,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:94-CR-16-1

Before GARZA, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Joseph Thomas, Jr., federal prisoner # 04789-078, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence based on the retroactive amendments to the crack cocaine guidelines. The Government moves for summary affirmance, arguing that Thomas was ineligible for relief under § 3582(c)(2) because he was sentenced as a career offender, pursuant to U.S.S.G. § 4B1.1, and not under the crack guidelines.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Thomas's guideline range was not derived from the quantity of crack cocaine involved in the offense, but rather from his career offender status, the district court was correct in concluding that Thomas was not eligible for a sentence reduction under § 3582(c)(2). Thomas may not use a § 3582(c)(2) motion as a challenge to the appropriateness of the district court's application of a career offender enhancement in its calculation of his original sentences. *See United States v. Whitebird*, 55 F.3d 1007, 1011 (5th Cir. 1995).

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 in which to file a brief is DENIED as unnecessary.