

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

United States Court of Appeals
Fifth Circuit

FILED

March 25, 2010

No. 09-40858
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ROBERT EARL THOMAS, JR.,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:98-CR-150-2

Before BENAVIDES, PRADO and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Robert Earl Thomas, Jr. federal prisoner # 07315-078, appeals following the district court's denial of his motion for modification of his sentence pursuant to 18 U.S.C. § 3582(c)(2), wherein he argued that the amendment of the crack cocaine Sentencing Guidelines resulted in a lowered sentencing range for his offense. The Government moves for summary affirmance or dismissal of the appeal, or, alternatively, for an extension of time to file a brief.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Section 3582(c)(2) permits the discretionary modification of a defendant's sentence "when it is based upon a sentencing range that has subsequently been lowered by an amendment to the Guidelines, if such a reduction is consistent with the policy statements issued by the Sentencing Commission." *United States v. Gonzalez-Balderas*, 105 F.3d 981, 982 (5th Cir. 1997). The district court's decision whether to reduce a sentence is reviewed for an abuse of discretion; the court's interpretation of the Guidelines is reviewed de novo. *United States v. Dublin*, 572 F.3d 235, 237 (5th Cir.), *cert. denied*, 130 S. Ct. 517 (2009).

"The crack cocaine guideline amendments do not apply to prisoners sentenced as career offenders." *United States v. Anderson*, 591 F.3d 789, 791 (5th Cir. 2009). The district court thus did not abuse its discretion in denying Thomas's § 3582(c)(2) motion. *See id.* at 790. Further, the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), is not applicable to § 3582(c)(2) proceedings. *Dublin*, 572 F.3d at 238.

The Government's motion for summary affirmance is GRANTED. The alternative motion for an extension of time is DENIED as unnecessary.

AFFIRMED.