

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 26, 2010

No. 09-50889
Conference Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DONALD RAY NELSON,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:00-CR-111-1

Before SMITH, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Donald Ray Nelson, federal prisoner # 01636-051, appeals the district court's decision granting a motion to reduce his sentence under 18 U.S.C. § 3582(c)(2) and denying a motion to reconsider that ruling. He argues that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the district court was not limited to the amended guidelines range but could have granted a greater reduction after considering the 18 U.S.C. § 3553(a) factors.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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In *Dillon v. United States*, 130 S. Ct. 2683, 2692 (2010), the Supreme Court held that *Booker* does not apply to § 3582(c)(c) proceedings. Because Nelson's argument is foreclosed by *Dillon*, 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 additional thirty days to file a brief is DENIED.