

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

No. 15-40324
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
January 13, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

VICTOR MANUEL VALLES-VELAZQUEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:05-CR-2731-2

Before DAVIS, BENAVIDES, and OWEN, Circuit Judges.

PER CURIAM:*

Victor Manuel Valles-Velazquez (Valles) is serving a 235-month sentence for conspiracy to possess with intent to distribute heroin. Valles appeals the district court's denial of his motion for a sentence modification under 18 U.S.C. § 3582(c)(2). Valles requested that the district court reduce his sentence based on Amendment 782 to the Sentencing Guidelines, which had the effect of retroactively lowering most drug-related base offense levels

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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by two levels. Valles argues that the district court abused its discretion in denying his motion because when recalculating his sentence under the amendment, it should have incorporated the two-level reduction pursuant to U.S.S.G. § 5K2.0 for agreeing to waive his right to appeal and seek post-conviction relief that he received at the initial sentencing.

The two-level reduction Valles initially received based on his agreement to waive his right to appeal or to seek post-conviction relief was a departure. *See* U.S.S.G. §5K2.0. The district court was required to re-calculate the guideline range without re-applying the § 5K2.0 departure, and it could not reduce Valles's sentence below 235 months, the bottom of the amended guideline range. *United States v. Contreras*, 820 F.3d 773, 774-75 (5th Cir. 2016). Given that Valles had been sentenced to 235 months, the district court did not abuse its discretion in finding that Valles was not entitled to a reduction in his sentence. *See id*; *United States v. Henderson*, 636 F.3d 713, 717 (5th Cir. 2011); U.S.S.G. § 1B1.10.

AFFIRMED.