

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

United States Court of Appeals
Fifth Circuit

FILED

October 14, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAMES DOUGLAS NICHOLS,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:09-CR-222-2

Before JOLLY, DAVIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

James Douglas Nichols, federal prisoner # 16570-078, moves for leave to proceed in forma pauperis (IFP) on appeal from the denial of his motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) in light of Amendment 782 to the Sentencing Guidelines. The district court denied his IFP motion and certified that his appeal was not taken in good faith. By moving for IFP status, he is challenging the district court's certification decision. *See Baugh*

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into an appellant's good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted).

In this court, Nichols contests the district court's conclusion that he is ineligible for a sentence reduction because his sentence was based on a stipulated sentence set forth in a plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), rather than the applicable guidelines range. He maintains that he was eligible for relief under § 3582(c)(2) despite the stipulated sentence and that the district court erred by not considering his eligibility for a reduction.

The Rule 11(c)(1)(C) plea agreement in this case did not call for Nichols to be sentenced within a particular sentencing range; provide for a specific term of imprisonment that was based upon a sentencing range applicable to the offense; or set forth a guidelines range for determining his sentence. *See United States v. Benitez*, 822 F.3d 807, 811-12 (5th Cir. 2016) (citing *Freeman v. United States*, 564 U.S. 522, 538-40 (2011) (Sotomayor, J., concurring)). The plea agreement did not refer to a sentencing range or offense level, and there is nothing connecting the stipulated sentence to the drug quantity involved in the offense or the guidelines sentencing range. Nichols's sentence was not based on the quantity of drugs involved in the offense or the advisory guidelines range and, therefore, he was not eligible for a reduction in sentence under § 3582(c)(2) based upon Amendment 782; the amendment did not have the effect of lowering Gonzales's applicable guideline range because his sentence was derived from the plea agreement. *See U.S.S.G. § 1B1.10(a)(2)(B)*.

Accordingly, the district court did not abuse its discretion by denying the § 3582(c)(2) motion. *See United States v. Henderson*, 636 F.3d 713, 717 (5th

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Cir. 2011). Nichols's appeal does not involve "legal points arguable on their merits (and therefore not frivolous)." *Howard*, 707 F.2d at 220. The motion for leave to proceed IFP is DENIED. The motion for sanctions is also DENIED. Nichols's appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at n.24; 5TH CIR. R. 42.2