

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

No. 16-10130
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 12, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LUIS ALONZO PENA,

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 4:08-CR-118-1

Before OWEN, ELROD, and COSTA, Circuit Judges.

PER CURIAM:*

Luis Alonzo Pena, federal prisoner # 36979-177, requests leave to proceed in forma pauperis (IFP) on appeal from the denial of his motion seeking a sentence reduction under 18 U.S.C. § 3582(c)(2) and the correction of a clerical error under Federal Rules of Criminal Procedure 35(a) and 36. Additionally, Pena asks this court to reduce his sentence.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 16-10130

In the motion denied by the district court, Pena, relying on Amendment 782 to the United States Sentencing Guidelines, sought a reduction of the sentences imposed following his convictions for conspiracy to possess with intent to distribute a controlled substance; possession with intent to distribute a controlled substance and aiding and abetting; and maintaining a drug-involved premises and aiding and abetting. Pena was held accountable for more than the quantity of marijuana that triggers the highest base offense level under both the version of U.S.S.G. § 2D1.1(c) in effect when he was sentenced and the retroactive, amended version. Accordingly, Amendment 782 did not change his offense level or lower his guidelines range, and the district court did not abuse its discretion in denying him a sentence reduction under § 3582(c)(2). *See* U.S.S.G. § 1B1.10(a)(2)(B); *United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009). Furthermore, Pena's challenge to the denial of his request for correction of a clerical error under Rules 35(a) and 36 is unavailing because, as noted by the district court, he has never identified an error in need of correction and filed an untimely request under Rule 35(a).

Because Pena's appeal lacks arguable merit and is therefore frivolous, his motion for leave to proceed IFP on appeal is DENIED, and his appeal is DISMISSED as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997); *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); 5TH CIR. R. 42.2. Pena's motion for a sentence reduction is likewise DENIED. Pena is CAUTIONED that any future frivolous, repetitive, or otherwise abusive filings will invite the imposition of sanctions, including dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court and any court subject to this court's jurisdiction.

MOTIONS DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.