

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

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No. 16-50472  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

December 27, 2016

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAMES BENTLY NEELY, SR.,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 6:05-CR-186-3

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Before HIGGINBOTHAM, DENNIS, and HAYNES, Circuit Judges.

PER CURIAM:\*

James Bently Neely, Sr., federal prisoner # 24634-079, has moved for leave to proceed in forma pauperis (IFP) on appeal from the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for a sentence reduction based on Amendment 782 to the Sentencing Guidelines. Under § 3582(c)(2), a district court may reduce a defendant's sentence if he was sentenced to a term of imprisonment based on a sentencing range that subsequently was lowered by

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 16-50472

the Sentencing Commission. Amendment 782 did not reduce Neely's guidelines sentencing range, and so he was ineligible for a sentencing reduction. *See* U.S.S.G. § 1B1.10(a)(2) & comment. (n.1(A)); *United States v. Bowman*, 632 F.3d 906, 910-11 (5th Cir. 2011).

Neely's appeal does not present a nonfrivolous issue and has not been brought in good faith. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). The motion for leave to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.