

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

No. 17-40492
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 11, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOE DELL STERLING,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:10-CR-263-3

Before STEWART, Chief Judge, and DENNIS and HAYNES, Circuit Judges.

PER CURIAM:*

Joe Dell Sterling, federal prisoner # 18324-078, challenges the denial of his 18 U.S.C. § 3582(c)(2) motion, urging that the district court erred in determining that he was ineligible for a sentencing reduction. He asserts that his sentence was tied to a guidelines range as his factual resume stipulated that he was aware that the conspiracy involved 1000 kilograms or more of marijuana, which resulted in the same base offense level as was used by the

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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probation officer. As a result, Sterling contends that his sentence, which exceeded the guidelines range calculated by the probation officer, constituted an upward departure and that he was entitled to a commensurate departure under the newly applicable guidelines range.

As the district court determined, appellant was not eligible for a reduction because his sentence was not “based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” § 3582(c)(2). Rather, the district court sentenced appellant to 240 months in prison based on his binding agreement under Federal Rule of Criminal Procedure 11(c)(1)(C). *See Freeman v. United States*, 564 U.S. 522, 534-40 (2011) (Sotomayor, J., concurring); *United States v. Benitez*, 822 F.3d 807, 809-12 (5th Cir. 2016). Therefore, the district court’s denial of a sentence reduction is AFFIRMED. *See Freeman*, 564 U.S. at 534-40 (Sotomayor, J., concurring); *Benitez*, 822 F.3d at 809-12.