

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2021

Lyle W. Cayce
Clerk

No. 20-50371
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JEREMIAH YBARRA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:16-CR-523-1

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Jeremiah Ybarra, federal prisoner # 55024-280, is serving a 10-year sentence imposed in 2017 after a jury convicted him of possession with intent to distribute methamphetamine. He moves for leave to appeal in forma pauperis (IFP) from the denial of his motion for a sentence reduction under

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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the First Step Act of 2018 (the Act). *See* Pub. L. No. 115-391, § 401(a)(2)(B), 132 Stat. 5194, 5220 (2018). Ybarra fails to challenge the district court's ruling that § 401 of the Act is not retroactive in his case. He has thus waived the issue. *See Frazier v. Wingo*, 717 F.3d 447, 448 (5th Cir. 2013). Regardless, the district court was correct. Under § 401(c) of the Act, § 401(a)(2)(B) is not retroactive because Ybarra was sentenced before the Act's 2018 effective date. Because Ybarra fails to identify any nonfrivolous issue for appeal, his motion for IFP is denied and his appeal is dismissed. *See McGarrah v. Alford*, 783 F.3d 584, 584 (5th Cir. 2015); *United States v. Boutwell*, 896 F.2d 884, 889-90 (5th Cir. 1990); *Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir 1997); 5TH CIR. R. 42.2.

IFP DENIED; APPEAL DISMISSED.