

October 16, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-10144
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID EARL KATES,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:97-CR-42-1

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

David Earl Kates, federal prisoner #30428-077, appeals from the denial of his motion for reduction of his sentence. He argues that his offense level under United States Sentencing Guidelines § 4B1.1 was incorrectly calculated. Because the district court was without authority to modify the imposed term, the denial of the motion for a sentence reduction is AFFIRMED. See United States v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Bridges, 116 F.3d 1110, 1112 (5th Cir. 1997). Kates' motion to file his reply brief out-of-time is GRANTED.