

FILED

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41255
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DANIEL MICHAEL KELLEY,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:91-CR-47-1
USDC No. 1:91-CR-48-1

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Daniel Michael Kelley, federal prisoner # 03456-078, appeals from the denial of his 18 U.S.C. § 3582(c)(2) motion for a reduction in his sentence under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(1), and its corresponding Sentencing Guidelines provision, U.S.S.G. § 4B1.4.

Kelley argues that U.S.S.G. App. C, amend. 599 should be applied to reduce his ACCA sentence. However, that provision is inapplicable to § 4B1.4, see United States v. Sanders, 372 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

1183, 1186 (10th Cir. 2004), and the denial of Kelley's 18 U.S.C. § 3582(c)(2) motion was not an abuse of discretion. See United States v. Shaw, 30 F.3d 26, 28-29 (5th Cir. 1994).

Kelley contends for the first time in a letter pursuant to FED. R. APP. P. 28(j), submitted after the Government filed its brief, that U.S.S.G. App. C, amend. 674, which became effective November 1, 2004, should apply to his case and result in reduction of his sentence. We need not consider Kelley's argument, as it was raised for the first time in a Rule 28(j) letter. See United States v. Sanchez-Villalobos, 412 F.3d 572, 577 (5th Cir. 2005), cert. denied, ___ S. Ct. ___ (Jan. 17, 2006) (No. 05-484). Kelley has filed a "motion to compel performance pursuant to 28 U.S.C. § 1361." Kelley's motion is denied.

AFFIRMED; MOTION TO COMPEL DENIED.