

October 21, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-50598  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BARRY YETT,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:95-CR-33-2-JRN  
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Before JOLLY, JONES, and WIENER, Circuit Judges.

PER CURIAM:\*

Barry Yett, federal prisoner # 61167-080, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence based on Amendment 599 to the United States Sentencing Guidelines. Yett pleaded guilty to possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1), and possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Yett argues that a sentence enhancement for possession of a weapon constituted impermissible double counting in violation of Amendment 599. He asserts that Amendment 599 must be applied to U.S.S.G. §§ 2K2.1, 2K2.4, and 2K2.5. Amendment 599, which amended the commentary to U.S.S.G. § 2K2.4, applies to convictions under 18 U.S.C. § 844(h) and 18 U.S.C. §§ 924(c) and 929(a). Yett pleaded guilty to violating 18 U.S.C. § 922(g)(1), and his guideline sentencing range was computed under U.S.S.G. § 2D1.1, based upon his drug conviction. Amendment 599 is irrelevant to his sentence, and his claims are without merit.

Yett also raises the Supreme Court's recent decision in Blakely v. Washington, 124 S. Ct. 2531 (2004), in support of his appeal. Yett's argument is not cognizable in the context of a motion under 18 U.S.C. § 3582(c)(2). See United States v. Shaw, 30 F.3d 26, 29 (5th Cir. 1994). Yett's motion to file a supplemental brief is DENIED.

AFFIRMED; MOTION TO FILE SUPPLEMENTAL BRIEF DENIED.