

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

United States Court of Appeals
Fifth Circuit

FILED

December 30, 2010

No. 08-50629
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL ADAM TREVINO, also known as Michael Trevino,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:99-CR-422-ALL

Before REAVLEY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Michael Adam Trevino, federal prisoner # 65127-080, pleaded guilty to possession with the intent to distribute more than 50 grams of cocaine base. *See* 21 U.S.C. § 841. The district court departed downward from Trevino's career offender guidelines range and sentenced him to 240 months of imprisonment. Trevino appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for a sentence reduction based on Amendment 706 to the crack cocaine Sentencing Guidelines.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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“The crack cocaine guideline amendments do not apply to prisoners sentenced as career offenders.” *United States v. Anderson*, 591 F.3d 789, 791 (5th Cir. 2009).

Trevino argues that, although he was designated a career offender, the district court downwardly departed so that he was ultimately sentenced based on the crack cocaine guidelines and, thus, he is eligible for a § 3582(c)(2) reduction. Trevino’s argument is unsupported by the record, which reflects that the district court adopted the career offender calculations. There is no indication that the district court based its departure sentence on the crack cocaine guidelines. Consequently, Trevino was ineligible for a § 3582(c)(2) sentence reduction. *See Anderson*, 591 F.3d at 791. The district court did not abuse its discretion in denying Trevino’s motion for a sentence reduction. *See id.*; *United States v. Townsend*, 55 F.3d 168, 170 (5th Cir. 1995).

Accordingly, the Government’s motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The Government’s alternative motion for an extension of time in which to file a brief is DENIED as unnecessary.