

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

No. 15-30839
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 15, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

NATHANIEL SINGLETON,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 2:07-CR-20102-1

Before GRAVES, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:*

Nathaniel Singleton, federal prisoner # 34438-018, who was convicted of being a felon in possession of a firearm, possession with intent to distribute cocaine, and possession of a firearm during a drug trafficking crime, moves for leave to proceed in forma pauperis (IFP) on appeal. He seeks to challenge the denial of his 18 U.S.C. § 3582(c)(2) motion in which he sought a sentence

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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reduction pursuant to Sentencing Guidelines Amendments 782 and 788, which retroactively lowered certain offense levels under U.S.S.G. § 2D1.1(c).

Singleton's guidelines range was not based on the quantity of cocaine pursuant to § 2D1.1(c); his guidelines range was based on U.S.S.G. § 2K2.1. Accordingly, he was not sentenced based on a sentencing range that was subsequently lowered by the Sentencing Commission, and the amendments do not apply to him. *See United States v. Anderson*, 591 F.3d 789, 791 & n.8 (5th Cir. 2009). The district court did not abuse its discretion in denying him a sentence reduction under § 3582(c)(2). *See* U.S.S.G. § 1B1.10(a)(2)(B); *United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009). Finally, because there is no constitutional right to appointed counsel in a § 3582(c)(2) proceeding, *United States v. Whitebird*, 55 F.3d 1007, 1011 (5th Cir. 1995), Singleton cannot claim ineffective assistance of counsel, *see Coleman v. Thompson*, 501 U.S. 722, 752 (1991).

Because the appeal lacks arguable merit and is therefore frivolous, Singleton's motion for leave to proceed IFP on appeal is DENIED, and his appeal is DISMISSED as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.