

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-40725  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERASMO FERNANDEZ, also known as Eddie,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:94-CR-3-6  
- - - - -

June 17, 1998

Before DAVIS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:\*

Erasmus Fernandez, federal prisoner #64973-079, appeals from the denial of his motion for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(2). Fernandez's motion for appointment of counsel is DENIED.

Fernandez contends that amendments 484 and 516 to the Sentencing Guidelines should be applied retroactively to his case. Fernandez raises his contention regarding amendment 484 for the first time on appeal; accordingly, our review is for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

plain error. *United States v. Calverley*, 37 F.2d 160, 162-64 (5th Cir. 1994)(en banc). Amendment 484 became effective before Fernandez was sentenced. Section 3582(c)(2) provides relief only in the event of certain enumerated *post-sentencing* amendments to the guidelines. Fernandez has not demonstrated error, plain or otherwise, because the district court did not reduce his sentence pursuant to the amendment.

Fernandez has failed to brief adequately his contention that amendment 516 should have been applied to reduce his sentence. We do not excuse his failure to brief the issue; we therefore do not consider the issue. *Grant v. Cuellar*, 59 F.2d 523, 525 (5th Cir. 1995). This appeal is frivolous.

APPEAL DISMISSED. 5TH CIR. R. 42.2.