

May 25, 2004

Charles R. Fulbruge III  
Clerk

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 03 - 20682  
SUMMARY CALENDAR

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ISRAEL ESPERICUETA,

Defendant - Appellant.

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On Appeal from the United States District Court for the  
Southern District of Texas  
(H-90-CR-428-12)

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Before REYNALDO G. GARZA, HIGGINBOTHAM, and DeMOSS, Circuit Judges.

REYNALDO G. GARZA, Circuit Judge:<sup>1</sup>

In this appeal we review the district court's denial of Defendant - Appellant, Israel Espericueta's, 18 U.S.C. § 3582(c)(2) motion and his motion for a completed ruling.

Espericueta was convicted of conspiracy to possess with intent to distribute cocaine, conspiracy to launder money, and aiding and abetting money laundering. He now argues that his

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<sup>1</sup>Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

sentence should be reduced by the retroactive application of two recent amendments to the Sentencing Guidelines: (1) a November 1, 1998 clarifying amendment to U.S.S.G. §5K2.0 and its commentary, labeled as amendment 585 in Appendix C of the Guidelines, and (2) a November 1, 2002 amendment to U.S.S.G. § 2D1.1 and the commentary to U.S.S.G. § 3B1.2, labeled as Amendment 640 in Appendix C of the Guidelines.

Neither Amendment 585, nor Amendment 640 are listed in U.S.S.G. § 1B1.10(c) as amendments to be applied retroactively, thus Espericueta is not entitled to collateral relief. *See* U.S.S.G. 1B1.10(c); *United States v. Davidson*, 283 F.3d 681, 684 (5<sup>th</sup> Cir. 2002); *United States v. Drath*, 89 F.3d 216, 217 (5<sup>th</sup> Cir. 1996). The district court did not abuse its discretion in denying Espericueta a reduction of his sentence. *See United States v. Shaw*, 30 F.3d 26, 28-29 (5<sup>th</sup> Cir. 1994).

Further, we affirm the district court's denial of Espericueta's motion for completed ruling as we assume the district court conducted the proper review absent evidence to the contrary. *Koetting v. Thompson*, 995 F.2d 37, 40 (5<sup>th</sup> Cir. 1993).

For the foregoing reasons, we affirm the district court's decision.