

October 24, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-51317
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

REBECCA JEAN STEWART, also known as Rebecca Jean Stewart, also
known as Cynthia Stewart,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:94-CR-67-1

Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Rebecca Jean Stewart, federal prisoner # 34290-080, appeals the district court's denial of her motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). Section 3582(c)(2) allows the court to modify a term of imprisonment "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the sentencing commission." § 3582(c)(2).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Amendment 505, effective November 1, 1994, amended U.S.S.G. § 2D1.1 to establish level 38 as the highest category of the drug quantity table. U.S.S.G., App. C, Amend. 505. Stewart was sentenced after amendment 505 took effect. Her argument is thus not one cognizable under § 3582. See United States v. Shaw, 30 F.3d 26, 29 (5th Cir. 1994).

The district court did not err in denying Stewart's § 3582(c) motion. Because this issue had already been decided adversely to Stewart in the denial of her prior § 3582(c) motion, this appeal is dismissed as frivolous. See 5TH CIR. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Stewart is warned that future challenges to her sentence under amendment 505 will invite the imposition of sanctions against her. Those sanctions could include a monetary penalty and/or limitations on her ability to challenge her sentence.

APPEAL DISMISSED; SANCTION WARNING ISSUED.