

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

United States Court of Appeals
Fifth Circuit

FILED

November 15, 2010

No. 08-50928
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RONALD KEITH MCCOY,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:99-CR-57-1

Before JOLLY, GARZA and STEWART, Circuit Judges.

PER CURIAM:*

Ronald Keith McCoy, federal prisoner # 92134-080, pleaded guilty in 2000 to conspiracy to possess with intent to distribute cocaine base in violation of 21 U.S.C. §§ 841 and 846, and he was sentenced as a career offender under the Sentencing Guidelines to 188 months of imprisonment and four years of supervised release. McCoy now moves for leave to proceed in forma pauperis (IFP) on appeal from the district court's order denying his motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). To obtain leave to proceed IFP

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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on appeal, McCoy must show that he is a pauper and that he will present a nonfrivolous issue for appeal. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982).

McCoy argues that the district court erred in its determination that he was ineligible for a sentence reduction pursuant to § 3582(c)(2). He argues that after *United States v. Booker*, 543 U.S. 220 (2005), the Sentencing Guidelines are advisory and that the career offender enhancement can no longer exclude him from a reduction under the crack cocaine amendment.

Booker does not apply to § 3582(c)(2) proceedings. McCoy's argument that he is now eligible for a sentence reduction under §3582(c)(2) because the Guidelines are advisory under *Booker* has been rejected and is foreclosed. *Dillon v. United States*, 130 S. Ct. 2683, 2692 (2010); *United States Dublin*, 572 F.3d 235, 236-39 (5th Cir.), *cert. denied*, 130 S. Ct. 517 (2009).

McCoy has not shown that he will present a nonfrivolous issue for appeal, and his request for leave to proceed IFP is DENIED. *See Carson*, 689 F.2d at 586. Because his appeal is frivolous, it is DISMISSED. *See* 5TH CIR. R. 42.2; *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). McCoy's motion for appointment of counsel is DENIED. *See United States v. Robinson*, 542 F.3d 1045, 1051-52 (5th Cir. 2008).