

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

United States Court of Appeals
Fifth Circuit

FILED

January 18, 2013

Lyle W. Cayce
Clerk

No. 12-50823

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ANTOINE EARL POWELL,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:05-CR-219-1

Before KING, CLEMENT, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Antoine Earl Powell, federal prisoner #56375-180, pleaded guilty to aiding and abetting the possession with intent to distribute at least 50 grams of crack cocaine (count one) and aiding and abetting the possession of a firearm during the commission of a drug-trafficking crime (count two). He was sentenced to 151 months on count one, to run consecutively to a 60-month sentence on count two. Powell's sentence was subsequently reduced, pursuant 18 U.S.C. § 3582(c), to the statutory minimum of 10 years in prison.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-50823

Powell now seeks leave to proceed in forma pauperis (IFP) on appeal to challenge the denial of his motion for a reduction of sentence pursuant to § 3582(c). By so moving, Powell challenges the district court's certification that his appeal was not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 & n.24 (5th Cir. 1997).

Powell contends that the provisions of the Fair Sentencing Act (FSA), which amended the amounts of crack needed to trigger statutory minimum sentences, should apply to him. Powell's argument fail. The district court lacked authority to reduce his sentence below the statutory minimum sentence of 10 years. *See United States v. Carter*, 595 F.3d 575, 578-81 (5th Cir. 2010). His argument that he is entitled to a reduction in light of the FSA is without merit. *Cf. Dorsey v. United States*, 132 S. Ct. 2321, 2335-36 (2012) ("[I]n federal sentencing the ordinary practice is to apply new penalties to defendants not yet sentenced.").

Powell has failed to demonstrate a nonfrivolous issue for appeal. Accordingly, his motion for leave to proceed IFP is denied, and the appeal is dismissed as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

IFP MOTION DENIED; APPEAL DISMISSED.