

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 09-15977  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MAY 26, 2010 JOHN LEY CLERK
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D. C. Docket No. 90-00032-CR-KLR

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL MALGOZA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Florida

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(May 26, 2010)

Before BLACK, PRYOR and FAY, Circuit Judges.

PER CURIAM:

Michael Malgoza appeals the denial of his second motion to reduce his

sentence. 18 U.S.C. § 3582(c)(2). We affirm.

In 1997, Malgoza moved to reduce his sentence of life imprisonment based on Amendment 505 to the Sentencing Guidelines. 18 U.S.C. § 3582(c). The district court denied the motion. The district court considered the quantity of cocaine involved in Malgoza's drug offenses and criminal history, see 18 U.S.C. § 3553(a), and determined that Malgoza's sentence "was fair and just." Malgoza did not appeal the decision.

In 2009, Malgoza filed a "renewed motion for reduction of sentence" and repeated the arguments made in his first motion to reduce. The district court denied Malgoza's motion based on lack of jurisdiction. In the alternative, the district court ruled that it was bound by the "law of the case" and, if not, "it was "exercising its discretion [by] refus[ing] to reduce" Malgoza's sentence.

Malgoza's second motion to reduce was barred by the law of the case. The district court rejected Malgoza's first request to reduce his sentence, and Malgoza failed to appeal that decision. See United States v. Escobar-Urrego, 110 F.3d 1556, 1560–61 (11th Cir. 1997). Malgoza's alleged "new evidence" also was available when he moved to reduce his sentence in 1997.

The denial of Malgoza's successive motion to reduce his sentence is **AFFIRMED.**