

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 08-7063**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIAM SHORTER,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:98-cr-00192-JCC-3)

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Submitted: November 10, 2009

Decided: December 16, 2009

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Before MICHAEL and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Jeffrey M. Brandt, ROBINSON & BRANDT, P.S.C., Covington, Kentucky, for Appellant. Chuck Rosenberg, United States Attorney, Morris R. Parker, Jr., Assistant United States Attorney, Alexandria, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William Shorter appeals the district court's order granting his 18 U.S.C. § 3582(c) (2006) motion. Shorter argues that he should receive a new full sentencing hearing in light of United States v. Booker, 543 U.S. 220 (2005), or at least resentencing applying the Sentencing Guidelines as advisory. This claim is without merit. See United States v. Dunphy, 551 F.3d 247, 251-53 (4th Cir.) (holding that "proceedings under § 3582(c)(2) do not constitute a full resentencing of the defendant" and stating that the rule in Booker regarding proof requirements for facts that increase criminal penalties "has no application to proceedings under § 3582(c)(2)"), cert. denied, 129 S. Ct. 2401 (2009). We have reviewed the record and find no reversible error.\* Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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\* We note that the Government did not file a cross-appeal to challenge the district court's amended sentence below the mandatory minimum 240-month sentence. Therefore, the alleged error may not be addressed on appeal. See Greenlaw v. United States, 128 S. Ct. 2559, 2564-67 (2008).