

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8442

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESSE JOHNSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, Senior District Judge. (1:06-cr-00048-TSE-1)

Submitted: July 23, 2009

Decided: July 27, 2009

Before WILKINSON and AGEE, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Jeffrey M. Brandt, ROBINSON & BRANDT, P.S.C., Covington, Kentucky, for Appellant. Dana J. Boente, Acting United States Attorney, Michael C. Vasiliadis, Special Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jesse Johnson appeals the district court's order granting his motion for reduction of sentence under 18 U.S.C. § 3582(c)(2) (2006). Johnson asserts on appeal that the district court erred in declining to sentence him below the amended Guidelines range for crack cocaine offenses, contending that a lower sentence would be permitted by Kimbrough v. United States, 128 S. Ct. 558 (2007), and United States v. Booker, 543 U.S. 220 (2005). However, this argument is foreclosed by this court's decision in United States v. Dunphy, 551 F.3d 247, 257 (4th Cir.), cert. denied, 129 S. Ct. 2401 (2009). Accordingly, we affirm the order of the district court. 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