

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-7701

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES ELMER GROSS, JR., a/k/a Man, a/k/a Grip,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, Senior District Judge. (1:02-cr-00201-JFM-3)

Submitted: May 23, 2017

Decided: June 1, 2017

Before GREGORY, Chief Judge, and TRAXLER and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James Elmer Gross, Jr., Appellant Pro Se. Robert Reeves Harding, Christine Manuelian, Assistant United States Attorneys, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Elmer Gross, Jr., appeals the district court's order denying his motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) (2012) and Amendment 782 to the Sentencing Guidelines. "We review a district court's decision to reduce a sentence under § 3582(c)(2) for abuse of discretion and its ruling as to the scope of its legal authority under § 3582(c)(2) de novo." *United States v. Muldrow*, 844 F.3d 434, 437 (4th Cir. 2016). After reviewing the transcript from Gross' resentencing hearing, we conclude that the district court attributed to Gross one kilogram of heroin and five kilograms of cocaine and applied six levels of enhancements. *See United States v. Gross*, 199 F. App'x 219, 241 (4th Cir. 2006) (No. 03-4458). Applying Amendment 782 and the other enhancements used at resentencing, Gross' new Guidelines range is 188 to 235 months' imprisonment on the relevant counts of conviction. U.S. Sentencing Guidelines Manual §§ 2D1.1(c)(5), 2E1.1(c)(2), ch. 5, pt. A (sentencing table) (2014). Because the district court varied downward and sentenced Gross to 180 months' imprisonment on the relevant counts, Gross is not eligible for a sentencing reduction. *See* USSG § 1B1.10(b)(1), p.s. & cmt. n.1(A).

Accordingly, we deny Gross' motion to appoint counsel and affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED