

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6862

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE LUIS JAIME PEREZ, a/k/a Pri, a/k/a Canello, a/k/a Jose Luis Jaimes Perez,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. Glen E. Conrad, District Judge. (5:07-cr-00063-GEC-RSB-18)

Submitted: November 16, 2017

Decided: November 21, 2017

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

Affirmed by unpublished per curiam opinion.

Jose Luis Jaime Perez, Appellant Pro Se. Donald Ray Wolthuis, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jose Luis Jaime Perez appeals the district court's order denying his fourth motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) (2012) and Amendment 782 to the Sentencing Guidelines, which the district court construed as Perez's third motion for reconsideration of the order denying his initial § 3582(c)(2) motion based on Amendment 782. "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).

The district court concluded that it lacked authority to consider Perez's motion, pursuant to *United States v. Goodwyn*, 596 F.3d 233, 235-36 (4th Cir. 2010) (holding that no federal statute expressly authorizes a district court to reconsider its order on a § 3582(c)(2) motion). However, we recently clarified that the prohibition against "18 U.S.C. § 3582(c)(2)-based motions for reconsideration" is not jurisdictional and therefore is "waived when the government fail[s] to assert it below." *United States v. May*, 855 F.3d 271, 274 (4th Cir. 2017). Nevertheless, as the district court correctly noted, Perez was not eligible for a sentence reduction under § 3582(c)(2) because his variance sentence was below the amended Guidelines range and was not based on substantial assistance. See U.S. Sentencing Guidelines Manual § 1B1.10(b)(2).

Accordingly, we affirm. 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