

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted December 10, 2009*

Decided December 23, 2009

Before

WILLIAM J. BAUER, *Circuit Judge*

TERENCE T. EVANS, *Circuit Judge*

ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 09-1967

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RAY ANTHONY PUGH,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of Illinois.

No. 01-40021-GPM

G. Patrick Murphy,
Judge.

ORDER

Ray Anthony Pugh appeals from an order reducing his prison sentence under 18 U.S.C. § 3582(c)(2). Pugh wanted a bigger reduction, but the district court concluded that it was not authorized to go any lower. We affirm the court's decision.

*After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* FED. R. APP. P. 34(a)(2).

Pugh pleaded guilty in 2001 to possessing with intent to distribute crack cocaine. *See* 21 U.S.C. § 841(a)(1). With a total offense level of 36 and criminal history category of III, his guidelines imprisonment range was 235 to 292 months. The district court imposed a term of 235 months, and we affirmed the judgment on direct appeal, *United States v. Pugh*, 39 F. App'x 392 (7th Cir. 2002).

In 2008, Pugh moved under § 3582(c)(2) for a sentence reduction based on a retroactive amendment to U.S.S.G. § 2D1.1. That amendment, if applied to Pugh, would lower his base offense level by two levels and reduce his imprisonment range to 188 to 235 months. Pugh, who filed his motion *pro se*, asked the district court to reduce his sentence even below 188 months in light of other factors in 18 U.S.C. § 3553(a). The court appointed the public defender's office to represent Pugh, and his new lawyer filed a separate motion under § 3582(c)(2) asking for a reduction to 188 months. Counsel filed an additional motion, however, asking the court to independently consider Pugh's *pro se* motion.

The district court granted counsel's motion and reduced Pugh's term of imprisonment to 188 months. But the court denied Pugh's *pro se* motion and explained that, in Pugh's case, a sentence below the amended guidelines range was not authorized by § 3582(c)(2).

The sentencing guideline that implements § 3582(c)(2) does not permit a reduction below the amended imprisonment range unless the original term of imprisonment was itself below-range, and Pugh's was not. *See* U.S.S.G. § 1B1.10(b)(2). Pugh argues, though, that *United States v. Booker*, 543 U.S. 220 (2005), which rendered the sentencing guidelines advisory, should also be read to eliminate any restriction on the application of § 3582(c)(2). As he acknowledges, however, we held in *United States v. Cunningham*, 554 F.3d 703, 707-08 (7th Cir. 2009), that *Booker* does not make § 3582(c)(2) or § 1B1.10(b)(2) advisory. Pugh's brief adds nothing new since our *Cunningham* decision.

AFFIRMED.