

NONPRECEDENTIAL DISPOSITION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 July 24, 2013*

Decided July 26, 2013

Before

RICHARD A. POSNER, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 13-1596

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

SYLVESTER HICKS,
Defendant-Appellant.

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

No. 07-CR-20038

Michael P. McCuskey,
Judge.

ORDER

Sylvester Hicks appeals from the denial of his motion under 18 U.S.C. § 3582(c)(2) to reduce his prison sentence based on a retroactive decrease in the base offense levels for crack-cocaine offenses. But that change did not benefit Hicks because his imprisonment range was calculated under the career-offender guideline. We thus affirm the judgment.

*After examining the parties' 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)(C).

In 2007 Hicks pleaded guilty to one count of possessing crack with intent to distribute, 21 U.S.C. § 841(a)(1) (2006 & Supp. I 2007). The district court found that Hicks was accountable for 50 to 150 grams of crack, which at that time corresponded to a base offense level of 30 under the Chapter 2 guideline presumptively applicable to violations of § 841(a)(1). *See* U.S.S.G. § 2D1.1(c)(5) (2007). But his lengthy criminal history made Hicks a career offender, which meant instead a base offense level of 37, *see* 21 U.S.C. § 841(b)(1)(A)(iii) (2006 & Supp. I 2007); U.S.S.G. § 4B1.1(b)(A) (2007). After a 3-level reduction for acceptance of responsibility, *see* U.S.S.G. § 3E1.1 (2007), Hicks's total offense level of 34 and criminal history category of VI yielded a guidelines imprisonment range of 262 to 327 months. The district court imposed a sentence of 262 months.

In 2012 Hicks filed a motion to reduce his sentence under 18 U.S.C. § 3582(c)(2) based on amendments 748 and 750 to the guidelines, which together retroactively lowered the offense levels for most crack offenses. *See* U.S.S.G. App. C, Vol. III 374–85, 391–98 (2011). His appointed attorney moved to withdraw, explaining that Hicks was sentenced under the career-offender guideline, which had not been amended or otherwise affected by any amendment. The district court agreed, granted the attorney's motion to withdraw, and denied Hicks's § 3582(c)(2) motion.

On appeal Hicks presents a very different contention. As we understand his brief, Hicks now argues that he is eligible for a sentence reduction because, he asserts, the district court at his sentencing in 2007 failed to recognize its discretion to disagree with the imprisonment range that resulted from applying the career-offender guideline. But, even if the sentencing court did make that mistake, Hicks could not bring the claim in a motion under § 3582(c)(2), which concerns only post-sentencing amendments promulgated and made retroactive by the Sentencing Commission. *See Dillon v. United States*, 130 S.Ct. 2683, 2694 (2010); *United States v. Jackson*, 573 F.3d 398, 400 (7th Cir. 2009). The amendments did not change the career-offender guideline, which the district court used to calculate the imprisonment range. Because Hicks was not "sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission," he was ineligible for a reduction in his sentence. 18 U.S.C. § 3582(c)(2); *see United States v. Davis*, 682 F.3d 596, 610 (7th Cir. 2012); *United States v. Griffin*, 652 F.3d 793, 803 (7th Cir. 2011); *United States v. Guyton*, 636 F.3d 316, 318–19 (7th Cir. 2011).

AFFIRMED