

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-15649
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT March 18, 2008 THOMAS K. KAHN CLERK

D. C. Docket No. 03-00227-CR-T-23TBM

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DARIAN TENSLEY,
a.k.a. Drac

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(March 18, 2008)

Before BIRCH, DUBINA and BLACK, Circuit Judges.

PER CURIAM:

Darian Tensley appeals the district court's denial of his 18 U.S.C. § 3582(c) motion to modify his sentence, based on the U. S. Sentencing Commission's amendment to U.S.S.G. § 2D1.1, which lowered the base offense level for crimes involving cocaine base.

We review *de novo* a district court's finding that it did not have the authority to modify a sentence under § 3582(c)(2). *United States v. White*, 305 F.3d 1264, 1267 (11th Cir. 2002). Amendment 706, effective November 1, 2007, reduced the base offense level for offenses involving at least 50, but less than 150, grams of cocaine base from 32 to 30. *See* U.S.S.G. App. C, Amend. 706; *compare* U.S.S.G. § 2D1.1(c)(4) (2006), *with* U.S.S.G. § 2D1.1(c)(5) (2007). Section 3582(c)(2) states a court may modify a term of imprisonment, based on a Guidelines range that is subsequently lowered by the Sentencing Commission, if the reduction is consistent with applicable policy statements from the Sentencing Commission, and it does not limit the time period when a court may make such a modification. *See* 18 U.S.C. § 3582(c)(2). A § 3582(c)(2) reduction is not authorized unless the amendment is listed in § 1B1.10(c). U.S.S.G. § 1B1.10(a). Amendment 706 was listed in § 1B1.10(c) effective on March 3, 2008.

The district court did not err in denying the motion because Tensley prematurely filed it on November 8, 2007. Although the amendment is retroactive,

it did not become retroactive until March 3, 2008. Accordingly, we affirm the district court.

AFFIRMED.