

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-15946
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JULY 9, 2012 JOHN LEY CLERK

D.C. Docket No. 9:02-cr-80051-DTKH-4

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HAROLD JOHNSON,

Defendant-Appellant.

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

(July 9, 2012)

Before EDMONDSON, WILSON and BLACK, Circuit Judges.

PER CURIAM:

Harold Johnson appeals the district court's denial of his motion to modify his sentence, pursuant to 18 U.S.C. § 3582(c)(2). Johnson was convicted of conspiracy to possess with the intent to distribute 50 grams or more of crack cocaine. Because Johnson had two prior felony convictions for the sale of a controlled substance, he was sentenced under the career offender guidelines of U.S.S.G. § 4B1.1. Nevertheless, Johnson filed his motion pursuant to Amendment 750 to the Sentencing Guidelines, which lowered the base offense levels applicable to crack cocaine quantity levels.

Johnson concedes that his argument is foreclosed by our decision in *United States v. Moore*, 541 F.3d 1323 (11th Cir. 2008). In *Moore*, we held that defendants who were originally sentenced under § 4B1.1(b)'s career offender table were not eligible for § 3582(c)(2) relief because their guideline ranges were not based on the drug quantity offense levels which Amendment 706 had lowered. *See Moore*, 541 F.3d at 1327-30 (concluding “[w]here a retroactively applicable guideline amendment reduces a defendant’s base offense level, but does not alter the sentencing range upon which his or her sentence was based, § 3582(c)(2) does not authorize a reduction in sentence”).

The district court did not err when it denied Johnson's motion to modify his sentence pursuant to 18 U.S.C. § 3582(c)(2). The court lacked the authority to

modify Johnson's sentence because Johnson was sentenced as a career offender, pursuant to U.S.S.G. § 4B1.1, and Amendment 750 did not have the effect of lowering Johnson's guideline range.

AFFIRMED.