

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 12-12325  
Non-Argument Calendar

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D.C. Docket No. 1:06-cr-00326-LSC-HGD-1

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

versus

GERALD SMITH, JR.,

Defendant – Appellant.

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Appeal from the United States District Court  
For the Northern District of Alabama

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(April 9, 2013)

Before TJOFLAT, JORDAN, and ANDERSON, Circuit Judges.

PER CURIAM:

On January 7, 2007, Gerald Smith, having pled guilty to distribution of five grams or more of crack cocaine, in violation of 21 U.S.C. § 841(a)(1), was

sentenced to a prison term of 235 months. In November 2008, Smith moved the District Court pursuant to 18 U.S.C. § 358 (c)(2) to reduce his sentence based on Amendment 706 to the Sentencing Guidelines relating to crack cocaine, U.S.S.G. § 2D.1. The court denied his motion because the Guidelines sentence range, pursuant to which he had been sentenced, was not changed by the application of Amendment 706. That is, because he had previously been convicted of at least two controlled substance offenses, he had been sentenced pursuant to U.S.S.G. § 4B1.1(b)(B), as a career offender, rather than § 2D1.1.

In January 2012, Smith filed a second § 3582(c)(2) motion for the reduction of his sentence based on Amendment 750 to the Guidelines, what Smith labeled the “permanent amendment” to U.S.S.G. § 2D.1. The court denied his motion, and he appeals.

We affirm the District Court’s ruling on the ground that Amendment 750 does not apply in this case. As noted above, Smith’s sentence was imposed pursuant to the career offender guideline, § 4B1.1(b)(B), not § 2D1.1. Accordingly, Amendment 750’s lowering of the § 2D1.1 base offense level “would not lower the sentencing range upon which [Smith’s] sentence was based. *United States v. Moore*, 541 F.3d 1323, 1327 (11th Cir. 2008) (affirming the denial of § 3582(c)(2) relief based on Amendment 706 where defendant was sentenced as a career offender).

AFFIRMED.