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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 13-10817 Non-Argument Calendar

D.C. Docket No. 5:96-CR-00023-CAR-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDLENCO SHANDAR BILLUPS,

Defendant-Appellant.

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

(August 16, 2013)

Before TJOFLAT, PRYOR, and JORDAN, Circuit Judges.

PER CURIAM:

Edlenco Shandar Billups appeals the district court's denial of his motion for a reduction of sentence, filed pursuant to 18 U.S.C. § 3582(c)(2). After review of the record and the parties' briefs, we affirm.

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On January 21, 1997, Mr. Billups pled guilty to conspiracy to possess cocaine base with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) & 846. The pre-sentence investigation report indicated that Mr. Billup's total offense level was 31 based upon the quantity of cocaine base (between 50-150 grams) as well as a two-level enhancement for possession of a dangerous weapon and adjustments for accepting responsibility and assisting authorities by providing timely and complete information. Mr. Billups, however, qualified as a career offender under U.S.S.G. § 4B1.1, which subjected him to an enhanced total offense level of 34¹ and a sentencing guideline range of 262 to 327 months' imprisonment. The district court sentenced Mr. Billups as a career offender to 300 months' imprisonment.

On November 1, 2011, Mr. Billups filed a § 3582(c)(2) motion for a sentence reduction based on Amendment 750 to the Sentencing Guidelines. The district court denied Mr. Billups' motion because "a defendant whose original sentence was based on the Career Offender Guideline . . . cannot receive a sentence reduction pursuant to a Guideline amendment like Amendment 750." D.E. 95 at 2. This appeal followed.

"In a § 3582(c)(2) proceeding, 'we review *de novo* the district court's legal conclusions regarding the scope of its authority under the Sentencing Guidelines.""

¹ Based on the career offender designation, Mr. Billups' base offense level increased to 37, but his three-level adjustment under U.S.S.G. § 3E1.1 for the acceptance of responsibility and assisting authorities with timely and complete information still applied.

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United States v. Moore, 541 F.3d 1323, 1326 (11th Cir. 2008). Under § 3528(c)(2), a district court may reduce the terms of a defendant's imprisonment if the sentence was based on a sentencing range that has subsequently been lowered by the Sentencing Commission. If, however, "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." Moore, 541 F.3d at 1330.

In this case, Mr. Billups was not eligible for a reduced sentence because he was sentenced as a career offender under § 4B1.1. His sentencing guideline range remained unchanged because § 4B1.1 was not affected by Amendment 750. *See id.* at 1327 (holding that defendants sentenced as career offenders under § 4B1.1 are not entitled to sentence reductions based on an amendment to the base offense levels for crack cocaine offenses in § 2D1.1); *United States v. Lawson*, 686 F.3d 1317, 1319 (11th Cir. 2012) (holding that *Moore* remains binding precedent and applies to Amendment 750).

Mr. Billups argues that he is nevertheless entitled to a sentence reduction based on the Third Circuit's reasoning in *United States v. Flemming*, 617 F.3d 252 (3d Cir. 2010). In *Flemming*, the Third Circuit decided "[t]he narrow issue" of "whether a career offender who receives a § 4A1.3 downward departure . . . to the Guidelines range for crack cocaine offenses is eligible for a sentence reduction

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under §3582(c)(2)." *Id.* at 254. That is not the issue in this case. First, Mr. Billups did not receive a downward departure under U.S.S.G. § 4A1.3(b); he received an adjustment under U.S.S.G. § 3E1.1 for acceptance of responsibility and assisting authorities with timely and complete information. Second, he was not sentenced within the guideline range applicable to his crack cocaine offense. Mr. Billups received a sentence of 300 months' imprisonment, and the guideline range for his crack cocaine offense—based on a total offense level of 31 and a criminal history category of V—was 168-210 months. *See* PSI at ¶ 82. These are critical distinctions and, therefore, *Flemming* does not help Mr. Billups. *Accord Moore*, 541 F.3d at 1329-31 (distinguishing its facts from other decisions where downward departures were given pursuant to § 4A1.3).

In sum, the district court correctly denied Mr. Billup's § 3582(c)(2) motion.

AFFIRMED.