

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6487

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALBERT LEE BETHEA, a/k/a Henry Green, a/k/a Champ,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Florence. Cameron McGowan Currie, District Judge. (4:00-cr-00066-CMC-2)

Submitted: April 22, 2009

Decided: August 10, 2009

Before WILKINSON, KING, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Albert Lee Bethea, Appellant Pro Se. Alfred William Walker Bethea, Jr., Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Albert Lee Bethea appeals the district court's order denying his motion for modification of sentence under 18 U.S.C. § 3582(c)(2) (2006). Bethea argues that the district court erred by failing to reduce his sentence based on Amendment 706 of the Guidelines, see U.S. Sentencing Guidelines Manual ("USSG") § 2D1.1(c) (2007 & Supp. 2008); USSG App. C Amend. 706. Amendment 706 lowered only the crack cocaine offense levels in USSG § 2D1.1. See United States v. Hood, 556 F.3d 226 (4th Cir. 2009). Thus, the Amendment did not alter Bethea's offense level, which was controlled by USSG § 4B1.1. Further, the fact that the district court reduced Bethea's sentence under 18 U.S.C. § 3553(e) (2006) for substantial assistance is irrelevant to the applicability of Amendment 706. Hood, 556 F.3d at 234.

Bethea also contends that the district court could have considered a sentence below the amended guidelines range under United States v. Booker, 543 U.S. 220 (2005). This claim is foreclosed by our decision in United States v. Dunphy, 551 F.3d 247 (4th Cir. 2009), petition for cert. filed, ___ U.S.L.W. ___ (U.S. Mar. 20, 2009) (No. 08-1185). We have reviewed the record and find no reversible error. Accordingly, we affirm the decision of the district court. We dispense with oral argument because the facts

and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED