

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6773

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALFRED EUGENE MACK,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Henry M. Herlong, Jr., District Judge. (7:01-cr-00826-HMH-1)

Submitted: April 27, 2009

Decided: May 14, 2009

Before WILKINSON, NIEMEYER, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Alfred Eugene Mack, Appellant Pro Se. Elizabeth Jean Howard, Assistant United States Attorney, Greenville, South Carolina, for Appellee

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alfred Eugene Mack appeals the district court's order denying his motion for modification of sentence. Mack 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 § 2D1.1(c) (2007 & Supp. 2008); USSG App. C Amend. 706, and United States v. Booker, 543 U.S. 220 (2005). As we recently observed, "Amendment 706 . . . amended § 2D1.1 of the Sentencing Guidelines by reducing the offense levels associated with crack cocaine quantities by two levels." United States v. Hood, 556 F.3d 226, 232 (4th Cir. 2009). Mack's sentence was determined by the career offender guideline, USSG § 4B1.1, and was not based on a sentencing range lowered by the amendment. The fact that the district court reduced Mack's sentence under 18 U.S.C. § 3553(e) (2006) and USSG § 5K1.1 is irrelevant to the applicability of Amendment 706. Hood, 556 F.3d at 234. Moreover, Mack's contentions that the court could have considered a sentence below the amended guidelines range and that he is entitled to a full resentencing under Booker are foreclosed by our decision in United States v. Dunphy, 551 F.3d 247 (4th Cir. 2009), petition for cert. filed, 77 U.S.L.W. 3559 (U.S. Mar. 20, 2009) (No. 08-1185).

We have reviewed the record and find no reversible error. Accordingly, we affirm 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