

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6790

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MATTHEW RONALD FARABEE,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Rebecca Beach Smith, District Judge. (4:01-cr-00009-RBS-1)

Submitted: February 27, 2009

Decided: March 11, 2009

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Matthew Ronald Farabee, Appellant Pro Se. William David Muhr, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Matthew Ronald Farabee appeals the district court's order denying his motion for modification of sentence under 18 U.S.C. § 3582(c)(2) (2006). Farabee was originally sentenced at the bottom of his guideline range to 130 months in prison. The district court subsequently granted the Government's motions under Fed. R. Crim. P. 35(b) and reduced Farabee's sentence to seventy-two months. In denying Farabee's § 3582(c)(2) motion, the district court determined that his amended guideline range under the crack cocaine amendments was 110 to 137 months; noted the court had already reduced his sentence to seventy-two months; and denied his motion for a further reduction.

On appeal, Farabee challenges the district court's reasoning for denying his motion. Because we conclude that the district court lacked authority under 18 U.S.C. § 3582(c)(2) to reduce Farabee's term of imprisonment to a term that was less than the bottom of his amended guideline range, we affirm. See United States v. Dunphy, 551 F.3d 247 (4th Cir. 2009). 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