

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6910

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CALVIN LEWIS BERRY,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. John Preston Bailey, Chief District Judge. (3:06-cr-00019-JPB-DJJ-1)

Submitted: March 17, 2009

Decided: March 20, 2009

Before TRAXLER, KING, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Brian Joseph Kornbrath, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Clarksburg, West Virginia, for Appellant. Paul Thomas Camilletti, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Calvin Lewis Berry appeals the district court's order granting in part and denying in part his motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (2006). Berry received the full sentence reduction available under Amendment 706 to the sentencing guidelines. Berry's contentions that the court could have considered a sentence below the amended guideline range or that he was entitled to a full sentencing hearing under United States v. Booker, 543 U.S. 220 (2005), are foreclosed by our decision in United States v. Dunphy, 551 F.3d 247 (4th Cir. 2009). Accordingly, we affirm the decision of the district court. We deny Berry's motion for appointment of counsel and 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