

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8120

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTOINE MARC FRAZIER, a/k/a Hog,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Florence. Terry L. Wooten, District Judge. (4:03-cr-00658-TLW)

Submitted: April 23, 2009

Decided: May 1, 2009

Before MICHAEL, GREGORY, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Antoine Marc Frazier, 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Unpublished opinions are not binding precedent in this circuit.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:

Antoine Marc Frazier appeals the district court's order denying his motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (2006). Frazier 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. 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). "Because [Frazier's] 240-month Guidelines sentence was based on a statutory minimum and USSG § 5G1.1(b), it was not based on a sentencing range lowered by Amendment 706" Id. at 233. The fact that the district court reduced Frazier's sentence for substantial assistance under 18 U.S.C. § 3553(e) (2006) and Fed. R. Crim. P. 35 is irrelevant to the applicability of Amendment 706. Hood, 556 F.3d at 234. 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