

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8505

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAMES COURY HOLMES,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., Senior District Judge. (6:00-cr-00107-HMH-1)

Submitted: September 18, 2009

Decided: September 30, 2009

Before WILKINSON, GREGORY, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

James Coury Holmes, 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Unpublished opinions are not binding precedent in this circuit.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:

James Coury Holmes appeals from the district court's order denying his motion for reduction of sentence, 18 U.S.C. § 3582(c) (2006). Holmes' motion was based on Amendment 709 to the Sentencing Guidelines, see USSG App. C, Supp., Amend. 709 (revising USSG § 4A1.2(a)(2)). Although the district court erroneously construed Holmes' motion as one seeking relief under Amendment 706, we find the error harmless because Amendment 709 does not apply retroactively and therefore would not authorize a reduction in Holmes' sentence. See USSG § 1B1.10(c); United States v. Dunphy, 551 F.3d 247, 249 n.2 (4th Cir. 2009) (noting that an amendment to the Guidelines may be applied retroactively only when the amendment is expressly listed in USSG § 1B1.10(c)). Accordingly, we affirm. 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