

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-6408

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HAYWARD JEROME NICHOLS, a/k/a Boobie,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Richard L. Voorhees, District Judge. (5:02-cr-00037-RLV-8)

Submitted: August 5, 2009

Decided: August 24, 2009

Before WILKINSON, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Reita P. Pendry, Charlotte, North Carolina, for Appellant.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Hayward Jerome Nichols appeals the district court's order denying his motion for reduction of sentence, 18 U.S.C. § 3582(c)(2) (2006), in which he sought the benefit of Amendment 706 of the sentencing guidelines. The record reflects that, at sentencing, the district court granted the Government's motion for downward departure based on Nichol's substantial assistance. See U.S. Sentencing Guidelines Manual § 5K1.1 (2000). The court sentenced Nichols to 210 months in prison—well below the mandatory life sentence to which he was subject and below his advisory Guidelines range of 292-365 months.

We recently held that "in reducing a sentence under . . . § 5K1.1, the sentencing court does not apply a Guidelines sentencing range." United States v. Hood, 556 F.3d 226, 235 (4th Cir. 2009). Therefore, Nichols was not "sentenced based on a sentencing range that has . . . been lowered," 18 U.S.C. § 3582(c)(2), and his sentence is not subject to further reduction under § 3582(c)(2). See id.

Accordingly, we affirm the denial of relief. 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