

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 10-6144**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCUS FRANKLIN,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:05-cr-00192-REP-1)

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Submitted: November 8, 2010

Decided: November 30, 2010

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Before MOTZ, AGEE, and DAVIS, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Amy Leigh Austin, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Richmond, Virginia, for Appellant. Sara Elizabeth Chase, Assistant United States Attorney, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marcus Franklin appeals the district court's order denying his motion for reduction of sentence, 18 U.S.C. § 3582(c) (2006). Our review of the record discloses that the gun and drug counts were grouped for purposes of determining Franklin's advisory Guidelines range. Although application of Amendment 706 of the sentencing guidelines would reduce the offense level for the drug count, the Amendment does not apply to the gun count. "[T]he offense level applicable to a Group is the offense level . . . for the [more] serious of the counts comprising the Group, i.e., the [higher] offense level of the counts in the Group." U.S. Sentencing Guidelines Manual § 3D1.3(a) (2008). Because the offense level for the firearm count is greater than the offense level (as reduced by Amendment 706) for the drug count, the offense level for the group is that of the gun count. Accordingly, application of Amendment 706 would not have the effect of lowering Franklin's advisory Guidelines range. See USSG § 1B1.10, comment. (n.1(A)). We therefore hold that the district court did not abuse its discretion in denying Franklin's motion, and 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