

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6827

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JACKIE MCKUBBIN, a/k/a Jack,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, District Judge. (3:95-cr-00005-FDW-3).

Submitted: September 30, 2010

Decided: October 8, 2010

Before NIEMEYER, AGEE, and KEENAN, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Jackie McKubbin, Appellant Pro Se. Amy Elizabeth Ray, Assistant United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jackie McKubbin appeals from the district court's order denying his motion for reduction of sentence under 18 U.S.C. § 3582(c) (2006) based on Amendment 591 of the United States Sentencing Guidelines Manual ("USSG"), effective November 1, 2000, and a subsequent order denying reconsideration. The district court reasoned that Amendment 591 was not retroactive. While this is incorrect, see USSG § 1B1.10(c) (listing Amendment 591 among those to apply retroactively), a reduction of sentence is nonetheless not authorized for McKubbin because he pled guilty to and was convicted of a conspiracy to violate 18 U.S.C. §§ 841, 860 (2006). Thus, his offense level was properly determined by reference to 18 U.S.C. § 860. Accordingly, we affirm the district court's denial of McKubbin's motion for a sentence reduction, but we modify the district court's order denying reconsideration to note that the motion is denied because a reduction is not authorized for McKubbin's crime of conviction. 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 AS MODIFIED