

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-6464

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALBERT MCCOY MERCER,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda Wright Allen, District Judge. (2:01-cr-00062-AWA-1)

Submitted: May 24, 2012

Decided: May 31, 2012

Before MOTZ and DAVIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Albert McCoy Mercer, Appellant Pro Se. James Ashford Metcalfe, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Albert McCoy Mercer appeals the district court's order denying his motions for reduction of sentence under 18 U.S.C. § 3582(c)(2) (2006). We review for abuse of discretion a district court's decision on whether to reduce a sentence under § 3582(c)(2) and review de novo a court's conclusion on the scope of its legal authority under § 3582(c). United States v. Munn, 595 F.3d 183, 186 (4th Cir. 2010).

Section 3582(c)(2) is inapplicable to Mercer because he was not sentenced "based on a sentencing range" that was subsequently lowered by the United States Sentencing Commission. Rather, as the district court correctly found, he was sentenced to the mandatory statutory minimum term of imprisonment. Mercer's sentence was therefore not subject to reduction under § 3582(c)(2). Id. at 187 ("[A] defendant who was convicted of a [cocaine base] offense but sentenced pursuant to a mandatory statutory minimum sentence is ineligible for a reduction under § 3582(c)(2)."). Further, Mercer's assertion of errors in the original sentencing proceeding should have been raised on direct appeal or in a motion to vacate under 28 U.S.C.A. § 2255 (West Supp. 2011) and does not provide a basis for relief under § 3582(c)(2). United States v. Torres-Aquino, 334 F.3d 939, 941 (10th Cir. 2003).

Accordingly, we affirm the district court's order. 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