

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7111

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICKY EUGENE EVERHART, a/k/a Red,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Statesville. Richard L.
Voorhees, District Judge. (5:03-cr-00034-RLV-1)

Submitted: November 2, 2012

Decided: November 6, 2012

Before WILKINSON, KEENAN, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Ricky Eugene Everhart, 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Unpublished opinions are not binding precedent in this circuit.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:

Ricky Eugene Everhart appeals the district court's order denying his 18 U.S.C. § 3582(c)(2) (2006) motion to reduce his sentence pursuant to Amendment 750 to the U.S. Sentencing Guidelines Manual ("USSG") (2011). A district court's decision on whether to reduce a sentence under § 3582(c)(2) is reviewed for abuse of discretion, while its conclusion on the scope of its legal authority under that provision is reviewed de novo. United States v. Munn, 595 F.3d 183, 186 (4th Cir. 2010).

Based on our review of the record, we conclude the district court properly declined to reduce Everhart's 188-month sentence, which was the result of a downward variance granted to ameliorate a sentencing disparity between Everhart and his co-defendant and in recognition of Everhart's family support and rehabilitative efforts. See USSG § 1B1.10(b)(2)(A), (B), p.s. (directing that "the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range," except when the defendant's original sentence was below the original Guidelines range due to the defendant's substantial assistance to the Government). Accordingly, we affirm for the reasons stated by the district court. See United States v. Everhart, No. 5:03-cr-00034-RLV-1 (W.D.N.C. June 20, 2012). 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