

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7469

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

STEVEN MCKELVEY, a/k/a Custard, a/k/a C,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. G. Ross Anderson, Jr., Senior District Judge. (6:00-cr-00380-GRA-1)

Submitted: December 17, 2012

Decided: January 9, 2013

Before NIEMEYER, MOTZ, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Steven McKelvey, Appellant Pro Se. Elizabeth Jean Howard, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Steven McKelvey filed an 18 U.S.C. § 3582(c)(2) (2006) motion, seeking the benefit of Amendment 750 of the U.S. Sentencing Guidelines. The district court denied the motion because McKelvey's sentence was not based on the Guidelines, but instead on the statutorily mandated minimum sentence. McKelvey then filed a "Motion to Assert Jurisdiction," contending that the district court erroneously denied his § 3582(c)(2) motion. The district court construed McKelvey's motion as a second § 3582(c)(2) motion seeking the benefit of Amendment 750 and denied relief. McKelvey appeals from this order. We affirm.

In United States v. Goodwyn, 596 F.3d 233 (4th Cir. 2010), we held that a district court lacks authority to grant a motion to reconsider its ruling on a § 3582(c)(2) motion. Id. at 234. Under Goodwyn, McKelvey had only one opportunity to seek, through a § 3582(c)(2) motion, the benefit of Amendment 750. See id. at 235-36. Once the district court ruled on McKelvey's first § 3582(c)(2) motion, it lacked authority to grant subsequent relief -- either by way of a second § 3582(c)(2) motion or a motion for reconsideration of the initial order.

Accordingly, we affirm the district court's order denying McKelvey's motion.

AFFIRMED