

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6447

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIE MARRION DUGGAN,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at
Columbia. Joseph F. Anderson, Jr., Senior District Judge. (3:08-cr-00854-JFA-1)

Submitted: June 13, 2019

Decided: June 18, 2019

Before WYNN and HARRIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Willie Marrion Duggan, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Willie Marrion Duggan appeals the district court's order denying for lack of jurisdiction his motion for reduction of sentence pursuant to section 404 of the First Step Act of 2018 ("2018 FSA"), Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222 (2018), which permits a district court to impose a reduced sentence on defendants convicted of covered offenses as if certain provisions of the Fair Sentencing Act of 2010 ("2010 FSA"), Pub. L. No. 111-220, §§ 2-3, 124 Stat. 2372, 2372 (2010), were in effect at the time the covered offense was committed. To qualify as a covered offense under the 2018 FSA, the conviction at issue had to have been modified by section 2 or 3 of the 2010 FSA. The offense for which Duggan was convicted and sentenced - possession with intent to distribute a quantity of cocaine base, in violation of 21 U.S.C. § 841(b)(1)(C) - was not modified by section 2 or 3 of the 2010 FSA. The district court thus lacked jurisdiction to reduce Duggan's sentence under the 2018 FSA. *See* 18 U.S.C. § 3582(c)(1)(B) (2012); *United States v. Green*, 405 F.3d 1180, 1184 (10th Cir. 2005) ("A district court is authorized to modify a [d]efendant's sentence only in specified instances where Congress has expressly granted the court jurisdiction to do so." (internal quotation marks omitted)); *see also United States v. Goodwyn*, 596 F.3d 233, 235 (4th Cir. 2010) (noting that, under § 3582(c)(1)(B), a district court may not modify a prison term once imposed unless a statute "*expressly* permits the court to do so").

We therefore modify the district court's order, *United States v. Duggan*, No. 3:08-cr-00854-JFA-1 (D.S.C. Mar. 19, 2019), to reflect a dismissal without prejudice, and affirm the dismissal as modified, 28 U.S.C. § 2106 (2012). We dispense

with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED