

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 08-14948  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MAR 16, 2009 THOMAS K. KAHN CLERK
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D. C. Docket No. 05-00461-CR-T-23-EAJ

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOE NATHAN GRAHAM,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Middle District of Florida

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**(March 16, 2009)**

Before TJOFLAT, MARCUS and ANDERSON, Circuit Judges.

PER CURIAM:

Joe Nathan Graham is serving a federal prison sentence of 108 months for a

crack cocaine offense. (The Guidelines sentence range prescribed a sentence of 108 to 135 months' imprisonment.) The district court, acting sua sponte, reduced his sentence to 87 months pursuant to 18 U.S.C. § 3582(c)(2), based on Amendment 706 of the Sentencing Guidelines. The court found that, under Amendment 706, Graham was entitled to a two-level reduction of his offense level. That reduction, coupled with his category II criminal history, yielded a sentence range of 87 to 108 months' imprisonment.

Graham now appeals his reduced sentence on the ground that the district court should have exercised its discretion under United States v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), and reduced his sentence to a term of 60 months under Kimbrough v. United States, 552 U.S. \_\_\_, 128 S.Ct. 558, 169 L.Ed.2d 481 (2007), and Gall v. United States, 552 U.S. \_\_\_, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007), because a sentence of 60 months would be “sufficient to fulfill the purposes of sentencing under 18 U.S.C. § 3553(a).”

In his brief to us, Graham argues that the district court misconstrued United States v. Moreno, 421 F.3d 1217 (11th Cir. 2005), in finding that Booker is inapplicable to § 3582 proceedings. He asserts that, under Booker, the Sentencing Guidelines and policy statements are advisory in § 3582 proceedings. Thus, the district court had authority to sentence him below the sentence range.

This court's recent decision in United States v. Melvin, \_\_\_ F.3d \_\_\_, 2009 WL 236053 (C.A. 11 (Fla.)), forecloses Graham's argument. The district court's decision is, accordingly,

AFFIRMED.