

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-10775
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JULY 22, 2009 THOMAS K. KAHN CLERK
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D. C. Docket No. 03-00065-CR-ORL-19-GJK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARTHUR LEE AVERY,

Defendant-Appellant.

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

(July 22, 2009)

Before BARKETT, MARCUS and ANDERSON, Circuit Judges.

PER CURIAM:

Arthur Lee Avery appeals the sentence imposed by the district court

following the grant of his motion for a reduced sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 706 of the Guidelines, which reduced base offense levels applicable to crack cocaine. As acknowledged by Avery, his argument is foreclosed by precedent. We recently held that neither United States v. Booker, 543 U.S. 220 (2005), nor Kimbrough v. United States, 128 S.Ct. 558 (2007), apply to § 3582(c)(2) proceedings. Melvin, 556 F.3d at 1192 (holding that “Booker and Kimbrough do not prohibit the limitations on a judge’s discretion in reducing a sentence imposed by § 3582(c)(2) and the applicable policy statement by the Sentencing Commission”). Therefore, the district court is bound by the limitations imposed by § 1B1.10 and lacks the authority to sentence a defendant below the amended guideline range. Accordingly, while Avery has preserved his Melvin challenge, we must affirm his sentence.

AFFIRMED.