

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-6818

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID WILBERT SHANTON, SR.,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. W. Craig Broadwater, District Judge. (CA-89-250-3)

Submitted: August 17, 2001

Decided: October 10, 2001

Before WIDENER, NIEMEYER, and WILLIAMS, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

David Wilbert Shanton, Sr., Appellant Pro Se. Sherry L. Muncy, OFFICE OF THE UNITED STATES ATTORNEY, Elkins, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

David Wilbert Shanton, Sr., appeals the district court's order denying his motion for reduction of sentence under 18 U.S.C.A. § 3582(c)(2) (West 2000). We have reviewed the record, the district court's opinion, and Shanton's informal appellate brief. Because he failed to challenge on appeal the district court's ruling rejecting his claim based upon Amendment 591 to the Sentencing Guidelines, Shanton has not preserved any issue for our review. 4th Cir. R. 34(b). Accordingly, we affirm this portion of the appeal on the reasoning of the district court. United States v. Shanton, No. CR-89-250-3 (N.D.W. Va. Apr. 23, 2001).

In his informal brief, Shanton seeks a reduction in his sentence under § 3582 based upon Amendment 599 to the Sentencing Guidelines. His claim is tantamount to a second § 3582 motion. Because "[t]he power to reconsider a sentence lies with the district court, see 18 U.S.C. § 3582(c)(2), and not the court of appeals," we dismiss this portion of the appeal without prejudice to Shanton's right to file his claim in the district court in the first instance. United States v. Jones, 55 F.3d 289, 296 (7th Cir. 1995). 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 IN PART AND DISMISSED IN PART