

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8345

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DONALD RAYFIELD HANDY,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Richard D. Bennett, District Judge. (1:05-cr-00279-RDB-1)

Submitted: March 31, 2009

Decided: May 20, 2009

Before MOTZ, TRAXLER, and DUNCAN, Circuit Judges.

Affirmed and remanded by unpublished per curiam opinion.

Donald Rayfield Handy, Appellant Pro Se. Rod J. Rosenstein, United States Attorney, Richard Charles Kay, Assistant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Donald Rayfield Handy appeals the district court's orders: (1) granting his motion for reduction of sentence, 18 U.S.C. § 3582(c)(2) (2006), and reducing his sentence to 168 months in prison; and (2) denying his motion for reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. United States v. Handy, No. 1:05-cr-00279-RDB-1 (D. Md. filed March 31, 2008, entered Apr. 1, 2008; filed Sept. 24, 2008, entered Sept. 25, 2008).*

Although we affirm on the merits, we also remand for the limited purpose of correcting clerical errors in both the order reducing Handy's sentence and the order denying his motion for reconsideration. See Fed. R. Crim. P. 36. The order reducing Handy's sentence should be corrected to reflect his previous total offense level of 35, his amended total offense level of 33, and his criminal history category of III. The order denying the motion for reconsideration should be corrected to reflect that Handy was resentenced to 168 months in prison.

* We note that there is generally no right to counsel in a § 3582(c)(2) proceeding, United States v. Legree, 205 F.3d 724, 729-30 (4th Cir. 2000), and that the district court had no authority to resentence Handy below the amended advisory guideline range, see United States v. Dunphy, 551 F.3d 247, 257 (4th Cir. 2009).

We therefore affirm and remand. The motion for appointment of counsel is denied. 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 AND REMANDED