

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 10-6316**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

T.B. MOSS, JR., a/k/a T.M. Moss, Jr.,

Defendant - Appellant.

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Appeal from the United States District Court for the Western  
District of North Carolina, at Charlotte. Frank D. Whitney,  
District Judge. (3:02-cr-00136-FDW-1)

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Submitted: June 17, 2010

Decided: June 28, 2010

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Before MOTZ and KING, Circuit Judges, and HAMILTON, Senior  
Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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T.B. Moss, Jr., Appellant Pro Se. Amy Elizabeth Ray, Assistant  
United States Attorney, Asheville, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

T.B. Moss, Jr., appeals the district court's order denying his 18 U.S.C. § 3582(c) (2006) motion based on Amendment 709 to the Sentencing Guidelines. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order, noting that Amendment 709 has not been made retroactively applicable and therefore was not available for relief. Amendment 709 did not become effective until November 1, 2007, and does not apply retroactively. See USSG § 1B1.10(c) (Amendment 709 is not listed); see also United States v. Dunphy, 551 F.3d 247, 249 n.2 (4th Cir.) (noting that an amendment to the Guidelines may be applied retroactively only when the amendment is expressly listed in USSG § 1B1.10(c)), cert. denied, 129 S. Ct. 2401 (2009). 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