

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 10-7016**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE OSEGUERA RODRIQUEZ, a/k/a Jose Oseguera,

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. (3:01-cr-00104-FDW-5)

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Submitted: November 3, 2010

Decided: December 7, 2010

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

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Affirmed by unpublished per curiam opinion.

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Jose Oseguera Rodriguez, 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Unpublished opinions are not binding precedent in this circuit.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:

Jose Oseguera Rodriguez appeals the district court's orders denying his motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(c) (2006) and denying his subsequent motion for reconsideration. For the reasons set forth below, we affirm.

Our review of the record reveals that the district court mistakenly assumed that Oseguera Rodriguez was seeking relief under Amendment 706 to the U.S. Sentencing Guidelines Manual ("USSG"), which lowered the base offense levels for drug offenses involving cocaine base. USSG App. C, Amend. 706. In his § 3582(c) motion, however, Oseguera Rodriguez clearly sought the benefit of Amendment 709, which altered the computation of criminal history points for certain misdemeanors and petty offenses.

Amendment 709, however, did not become effective until November 1, 2007, and does not apply retroactively. See USSG App. C, Amend. 709 (providing effective date); USSG § 1B1.10(c), p.s. (listing amendments that apply retroactively); 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).

Because Oseguera Rodriguez is clearly not entitled to a reduction based on Amendment 709, we affirm the district court's orders on this alternate ground. 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