

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-6524

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GEORGE EDWARD SMITH, JR., a/k/a Little George, a/k/a Baby G.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Henry Coke Morgan, Jr., Senior District Judge. (2:03-cr-00094-HCM-FBS-1)

Submitted: June 11, 2012

Decided: June 19, 2012

Before AGEE, KEENAN, and FLOYD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

George Edward Smith, Jr., Appellant Pro Se. William David Muhr, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

George Edward Smith, Jr., appeals the district court's order denying his 18 U.S.C. § 3582(c)(2) (2006) motion for reduction of sentence. We have reviewed the record and find no reversible error. The district court found that Amendment 750 lowered Smith's Guidelines range and denied relief upon reasoning that Smith was not eligible for a sentence reduction because the low end of his reduced Guidelines range did not fall below his current term of imprisonment. See United States v. Stewart, 595 F.3d 197, 201-03 (4th Cir. 2010). While we concur that Smith is not entitled to relief, we disagree with the district court's analysis. We conclude that Smith's Guidelines range was simply unaffected by Amendment 750 because his base offense level remained thirty-six pursuant to U.S. Sentencing Guidelines Manual § 2D1.1(c)(2) (2011). Thus, because Smith is not eligible for resentencing under § 3583(c)(2), we affirm the judgment of the district court. See United States v. Smith, 395 F.3d 516, 519 (4th Cir. 2005) (stating that appellate court "may affirm on any grounds apparent from the record"). 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