

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-8062

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC BERNARD SMITH, a/k/a Pac-Man, a/k/a E,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Statesville. Richard L.
Voorhees, District Judge. (5:03-cr-00012-RLV-CH-2)

Submitted: March 28, 2013

Decided: April 2, 2013

Before NIEMEYER, KING, and KEENAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Eric Bernard Smith, Appellant Pro Se. Thomas A. O'Malley,
OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina,
Amy Elizabeth Ray, Assistant United States Attorney, Asheville,
North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eric Bernard Smith appeals the district court's order denying his 18 U.S.C. § 3582(c)(2) (2006) motion to reduce his sentence pursuant to Amendment 750 to the U.S. Sentencing Guidelines Manual (2011) and United States v. Simmons, 649 F.3d 237 (4th Cir. 2011). We have reviewed the record and conclude the district court properly found it lacked the authority to reduce Smith's life sentence, which was the statutory mandatory minimum. See United States v. Munn, 595 F.3d 183, 186 (4th Cir. 2010) (explaining that this court reviews de novo the district court's "conclusion on the scope of its legal authority under § 3582(c)(2)"); see also Dillon v. United States, ___ U.S. ___, 130 S. Ct. 2683, 2690-92 (2010) (clarifying that § 3582(c)(2) does not authorize a resentencing, but rather permits a sentence reduction within the narrow bounds established by the Sentencing Commission). Furthermore, Smith's claim pursuant to Simmons simply is not cognizable in a § 3582(c)(2) proceeding. Accordingly, we affirm for the reasons stated by the district court. See United States v. Smith, No. 5:03-cr-00012-RLV-CH-2 (W.D.N.C. Oct. 31, 2012). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED