

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-6809

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TAMMY TERRELL BROWN,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Dennis W. Shedd, District Judge. (CR-92-132, CA-97-99-3-19)

Submitted: November 25, 1997

Decided: December 18, 1997

Before WIDENER, HAMILTON, and WILLIAMS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Tammy Terrell Brown, Appellant Pro Se. Terry L. Wooten, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Tammy Brown appeals from the district court's order denying her motion for habeas corpus relief under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1997). Initially, we note that Brown alleges no violation of any constitutional right, as required by 28 U.S.C.A. § 2253(c)(2) (West Supp. 1997), for issuance of a certificate of appealability. In any event, however, we find that Brown is not entitled to relief on the merits.

Brown's claim that the sentencing court erroneously added two points to her criminal history score is moot because, as a career offender, the guidelines dictated that her criminal history category be Category VI. See United States Sentencing Guidelines Manual, § 4B1.1 (1995). Moreover, her contention that Amendment 506 to § 4B1.1 requires reduction of her sentence is foreclosed by the Supreme Court's recent determination that Amendment 506 is invalid. See United States v. LaBonte, 117 S. Ct. 1673, 1679 (1997). Finally, the district court properly declined to reduce Brown's sentence based on Amendment 459 to § 3E1.1 because that amendment cannot be applied retroactively. See United States v. Rodriguez-Diaz, 19 F.3d 1340, 1341 (11th Cir. 1994).

Accordingly, we deny a certificate of appealability and dismiss this appeal. 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.

DISMISSED