

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 98-4886**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RICKY MOORE,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, District Judge. (CR-98-183)

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Submitted: July 22, 1999

Decided: July 28, 1999

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Before ERVIN, HAMILTON, and TRAXLER, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Brian M. Aus, Durham North Carolina, for Appellant. Walter C. Hotton, Jr., United States Attorney, Lisa B. Boggs, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Ricky Moore appeals his sentence of 132 months following his conviction on one count of distribution of cocaine base in violation of 21 U.S.C. § 841(a)(1) (1994). Moore contends that the court erred in sentencing him as career offender because two of his three prior felonies were crimes that he contends should not be considered as felonies for purposes of his sentence calculation. We have previously rejected each of Moore's arguments in relation to his career offender status, and we see no reason to deviate from our prior precedent. See United States v. Johnson, 114 F.3d 435, 445 (4th Cir. 1997) (holding that federal sentencing court is not bound by subsequent state action changing state crime from felony to misdemeanor); United States v. Raynor, 939 F.2d 191, 194-95 (4th Cir. 1991) (holding that state characterization of offense as a misdemeanor does not limit determination as a felony by a federal court). In addition, the evidence fully supported the district court's refusal to grant a four point reduction in the offense level based on Moore's role in the offense. Accordingly, we affirm the sentence imposed by the district court. 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