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United States Court of Appeals For the First Circuit

No. 03-1563

UNITED STATES,

Appellee,

v.

JULIO CONEO-GUERRERO,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

[Hon. José Antonio Fusté, U.S. District Judge]

Before

Lynch, Lipez and Howard,
Circuit Judges.

Julio Coneo-Guerrero on brief pro se.

Nelson Perez-Sosa, Assistant United States Attorney, H.S. Garcia, United States Attorney, and Sonia I. Torres-Pabon, Assistant United States Attorney, Chief, Criminal Division, on brief for appellee.

February 3, 2004

Per Curiam. After carefully considering the briefs and record on appeal, we affirm the decision below.

The appellant could benefit from a retroactive application of Amendment 640 only if the amendment were listed as retroactive under U.S.S.G. § 1B1.10(c), or it served merely to clarify the existing guideline. United States v. Prezioso, 989 F.2d 52 (1st Cir. 1993). The amendment satisfies neither condition. It is not listed under U.S.S.G. § 1B1.10(c), and it substantively changed the guideline by creating an entirely new cap on offense level. See United States v. Diaz-Cardenas, 351 F.3d 404 (9th Cir. 2003); United States v. Garcia, 339 F.3d 116 (2nd Cir. 2003).

Affirmed. Loc. R. 27(c).