

Not for Publication in West's Federal Reporter

United States Court of Appeals
For the First Circuit

No. 08-1461

UNITED STATES OF AMERICA,

Appellee,

v.

MITCHELL MCGUIRE,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. George Z. Singal, U.S. District Judge]

Before

Lipez, Selya and Howard, Circuit Judges.

Mitchell McGuire on brief pro se.
Renée M. Bunker, Assistant U.S. Attorney, and Paula D. Silsby, United States Attorney, on brief for appellee.

January 14, 2009

Per Curiam. This is defendant Mitchell McGuire's pro se appeal from the district court's denial of a sentence reduction under 18 U.S.C. § 3582 and the recently amended crack guidelines.¹ The only argument that defendant makes on appeal is that the district court denied him due process by treating his motion for appointment of counsel as a motion for a sentence reduction and denying it as such.

We need not consider the merits of that due-process argument because any error in denying a reduction without first giving defendant an opportunity to be heard was harmless; it is clear that the reduction would have been correctly denied in any event. United States v. Ganun, 547 F.3d 46, 47 (1st Cir. 2008) (per curiam). As recognized by the district court, defendant was statutorily ineligible for a sentence reduction under 18 U.S.C. § 3582(c)(2) because his guideline range was based on the career offender guideline rather than the crack guideline and therefore was not "based on a sentencing range that has subsequently been lowered" by the recent crack cocaine amendments. United States v. Ayala-Pizarro, 2008 WL 5338459, at *1 (1st Cir. Dec. 23, 2008); United States v. Caraballo, 2008 WL 5274853, at *5 (1st Cir. Dec. 22, 2008).

¹Amendment 706, effective November 1, 2007, reduced the base offense levels for crack offenses by two levels. Amendment 713, effective March 3, 2008, made amendment 706 retroactive.

Accordingly, the district court's order denying a sentence reduction is affirmed.