

March 25, 2009

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ARNIE PORTER,

Defendant-Appellant.

No. 08-1255

(D.C. No. 96-CR-00444-EWN-1)

(D. Colo.)

ORDER AND JUDGMENT*

Before **KELLY, McKAY**, and **HARTZ**, Circuit Judges.

The defendant filed a motion in the district court seeking a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2), which retroactively reduced certain prior final sentences for crack cocaine convictions. He asked the trial court to reduce his prior final sentence below the amended Guideline range. The court reduced Defendant's sentence to the bottom of the amended range but refused to

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2). Therefore, this case is ordered submitted without oral argument.

consider the additional reduction, indicating it lacked authority to do so.

Defendant appeals that decision.

In the interim, this court decided *United States v. Rhodes*, 549 F.3d 833 (10th Cir. 2008), which forecloses Defendant's argument.

AFFIRMED.

Entered for the Court

Monroe G. McKay
Circuit Judge