

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

December 10, 2014
Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC GRAYSON,

Defendant - Appellant.

No. 14-8048
(D.C. No. 1:08-CR-00173-NDF-1)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **KELLY, BALDOCK, and BACHARACH**, Circuit Judges.**

Defendant-Appellant Eric Grayson appeals from the district court's dismissal with prejudice of his motion to reduce sentence based upon Amendment 750 to the Sentencing Guidelines. United States v. Grayson, 08-CR-173-F (D. Wyo. June 6, 2014). We previously rejected a similar claim (based upon Amendment 706) because Mr. Grayson's 15-year sentence was "based on" a Fed.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

R. Crim. P. 11(c)(1)(C) plea agreement rather than the Sentencing Guidelines. United States v. Grayson, 387 F. App'x 888, 890 (10th Cir. 2010). In this appeal, Mr. Grayson argues that we should reconsider our precedent in United States v. Graham, 704 F.3d 1275 (10th Cir. 2013). In Graham, we construed Freeman v. United States, 131 S. Ct. 2685 (2011) as holding that a sentence pursuant to a Rule 11(c)(1)(C) plea agreement is “based on” the plea agreement, not the Sentencing Guidelines, absent language using or employing a specific Guidelines range. 704 F.3d at 1278. Accordingly, we denied the defendant’s 18 U.S.C. § 3582(c)(2) motion for a sentence reduction based on a Guideline amendment. Id. at 1279.

Although Mr. Grayson urges us to follow a contrary interpretation, United States v. Epps, 707 F.3d 337, 351 (D.C. Cir. 2013), absent en banc review or superseding law, one panel of this court cannot overrule another. Kitchen v. Herbert, 755 F.3d 1193, 1233 (10th Cir. 2014) (Kelly, J., concurring in part and dissenting in part). Following Graham, as we must, Mr. Grayson’s sentence is not one “based on” the Sentencing Guidelines and therefore a sentence reduction pursuant to Amendment 750 and 18 U.S.C. § 3582(c)(2) is unavailable.

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge