

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
*Southern Division***

UNITED STATES OF AMERICA

v.

Criminal Case No. PWG-14-6

ALIMAMY BARRIE,

Defendant.

* * * * *

MEMORANDUM OPINION AND ORDER

On September 4, 2014, a jury found Alimamy Barrie guilty of two counts of wire fraud, in violation of 18 U.S.C. § 1343, and one count of aggravated identity theft, in violation of 18 U.S.C. § 1028A. Jury Verdict, ECF Nos. 99, 100. He was sentenced on December 16, 2014. Docket Entry, ECF No. 112; Jmt., ECF No. 114. I calculated his total adjusted offense level to be 26 and his criminal history category to be III, and I imposed a mandatory minimum sentence, sentencing him to 112 months and 1 day of imprisonment. Jmt.; Stmt. of Reasons, ECF No. 115. He appealed to the Fourth Circuit on December 30, 2014, ECF No. 116, and the Fourth Circuit affirmed this Court's Judgment on November 23, 2015, ECF No. 137.

While Barrie's appeal was pending, the United States Sentencing Commission (the "Commission") amended the United States Sentencing Guidelines ("U.S.S.G." or "Guidelines"), with Amendments 791, 792, and 794 going into effect on November 1, 2015. In Barrie's view, "had these amendments been available at Sentencing the Court would have sentenced [him] to a much lower guideline range," given that "Trial Counsel made several arguments for a downward departure that [were] later incorporated into amendments 791, 792, and 794." Def.'s Mot. 1-2,

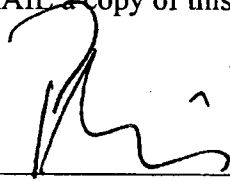
amendment to the Sentencing Guidelines applies retroactively to cases *pending on direct appeal*.” 438 F. App’x at 182 (emphasis added). The court did not address retroactive application on collateral review. Indeed, the law in the Fourth Circuit is clear that “clarifying amendments apply retroactively *when the amendment takes place before sentencing, or while direct appeal is pending*.” *United States v. Smith*, 86 F. App’x 646, 647 (4th Cir. 2004) (emphasis added); *see also See United States v. Capers*, 61 F.3d 1100, 1109 (4th Cir.1995) (“[C]ourts can give retroactive effect to a clarifying (as opposed to substantive) amendment regardless of whether it is listed in U.S.S.G. § 1B1.10. *United States v. Deigert*, 916 F.2d 916, 917–18 (4th Cir.1990) (per curiam); *United States v. Fells*, 920 F.2d 1179, 1184 (4th Cir.1990), *cert. denied*, 501 U.S. 1219 (1991). This rule applies *when a sentencing court is faced with a presentencing clarifying amendment* that postdates the particular edition of the Guidelines Manual used at sentencing” U.S.S.G. § 1B1.11(b)(2) (“[I]f a court applies an earlier edition of the Guidelines Manual, the court shall consider subsequent amendments, to the extent that such amendments are clarifying rather than substantive changes.”); *see Deigert*, 916 F.2d at 917–18. The rule also applies *when a reviewing court is confronted with a postsentencing clarifying amendment*. *See United States v. Fant*, 974 F.2d 559, 564 (4th Cir.1992); *United States v. Johnson*, 953 F.2d 110, 113 (4th Cir.1991); *Fells*, 920 F.2d at 1184.” (footnote omitted) (emphasis added)). But here, the amendments were not in effect before Barrie was sentenced, and the case is no longer before the Fourth Circuit. Rather, Barrie seeks collateral review of his sentence.

Moreover, on collateral review, a clarifying amendment applies only if the Commission made it retroactive. *See United States v. Goines*, 357 F.3d 469, 480 (4th Cir. 2004) (“[A] defendant may rely on a clarifying or hybrid amendment to support a § 3582(c)(2) motion, so

at *2 (D. Md. Sept. 14, 2016) ("The Amendment was made retroactive by the Commission, not the Supreme Court, and applies retroactively only on direct appeal. U.S.S.G. § 1B1.10 lists all Guidelines amendments that the Sentencing Commission has made retroactively applicable to defendants on collateral review, rather than direct appeal, and Amendment 794 is not listed in § 1B1.10 as retroactively applicable." (citations omitted)). Therefore, the motion is denied. *See Dillon*, 560 U.S. at 821–22.

ORDER

Accordingly, it is, this 4th day of December, 2017 hereby ORDERED that Defendant Alimamy Barrie's Motion to Reduce/Modify Sentence Pursuant to 18 U.S.C. § 3582(c)(2), ECF No. 151, IS DENIED. The Clerk SHALL MAIL a copy of this Memorandum Opinion and Order to Barrie.



Paul W. Grimm
United States District Judge

lyb

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-7654

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALIMAMY BARRIE,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt.
Paul W. Grimm, District Judge. (8:14-cr-00006-PWG-1)

Submitted: April 19, 2018

Decided: April 24, 2018

Before GREGORY, Chief Judge, and THACKER and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Alimamy Barrie, Appellant Pro Se. Ellen Elisabeth Cobb, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alimamy Barrie appeals the district court's order denying his 18 U.S.C. § 3582(c)(2) (2012) motion for a sentence reduction. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *United States v. Barrie*, No. 8:14-cr-00006-PWG-1 (D. Md. Dec. 5, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: May 22, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7654
(8:14-cr-00006-PWG-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ALIMAMY BARRIE

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: May 30, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7654
(8:14-cr-00006-PWG-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ALIMAMY BARRIE

Defendant - Appellant

M A N D A T E

The judgment of this court, entered April 24, 2018, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk