

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 09-1489

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United States of America,

Appellee,

v.

Owen McMullen,

Appellant.

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\* Appeal from the United States  
\* District Court for the Eastern  
\* District of Arkansas.  
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\* [UNPUBLISHED]  
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Submitted: December 7, 2009  
Filed: December 10, 2009

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Before WOLLMAN, RILEY, and SMITH, Circuit Judges.

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PER CURIAM.

Owen McMullen appeals the district court's<sup>1</sup> order denying his motion for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 706 to the Sentencing Guidelines. We find no abuse of discretion in the district court's decision not to reduce McMullen's sentence, as the court had considered the amended Guidelines range at McMullen's request when he was sentenced, although the amendment was not yet in effect. See U.S.S.G. § 1B1.10(b)(1) (in determining whether reduction is warranted, court should determine amended Guidelines range

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<sup>1</sup>The Honorable William R. Wilson, Jr., United States District Judge for the Eastern District of Arkansas.

that would have been applicable if amended Guidelines had been in effect); United States v. Curry, No. 09-1325, 2009 WL 3713702, at \*1 (8th Cir. Nov. 9, 2009) (standard of review).

Accordingly, the judgment is affirmed, and counsel is granted leave to withdraw.

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