

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCELLA DIANE MACHADO,

Defendant.

Case No. 10-20007-02-CM

MEMORANDUM AND ORDER

Defendant Marcella Machado filed a motion for modification or reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) (Doc. 47). In her motion, defendant asserts that an “intervening, post-sentencing change of the United States Sentencing Guidelines” entitles her to a reduction of her sentence. (Doc. 47 at 2.) The amendment that defendant cites is “Amendment 12, Criminal History.” (*Id.*) But the content of defendant’s motion makes clear that she is actually referencing Amendment 709, which was effective on November 1, 2007, and addressed two areas of the criminal history rules—(1) counting multiple prior sentences, and (2) using misdemeanor and petty offenses to calculate a criminal history score. (*See id.* (quoting U.S. Sentencing Guidelines Manual supp. to app. C (2010))).

Defendant pleaded guilty to conspiracy to commit aggravated identity theft, aggravated identity theft, and theft or receipt of stolen mail. This court sentenced defendant on June 7, 2010. Amendment 709 was therefore already in effect and was applied at defendant’s sentencing. For this reason, the amendment is not one that reduced a range subsequent to defendant’s sentencing, as required for relief under § 3582(c)(2). *See United States v. Rabieh*, 384 F. App’x 781, 783 (10th Cir. 2010) (affirming a

decision to deny § 3582(c)(2) relief because amendments were effective before the defendant was sentenced). The court denies defendant's motion on this basis.

Even if this were not the case, a review of defendant's criminal history in the presentence investigation report (Doc. 35) convinces the court that the criminal history points were accurately assessed. Defendant states no valid basis for relief. For these reasons, the court denies defendant's motion.

IT IS THEREFORE ORDERED that defendant's Motion for Modification or Reduction of Sentence (Doc. 47) is denied.

Dated this 24th day of January, 2014, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge