

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

PEDRO ZAMORO,

Defendant.

ORDER

05-cr-39-bbc-02

Defendant Pedro Zamoro has moved for a reduction of his sentence under 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10. He contends that he is entitled to a reduction now that the sentencing guidelines have been amended in accordance with The Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2(a)(2), 124 Stat. 2372 (2010), to reflect the changes in the amounts of crack cocaine that trigger mandatory minimum sentences. Unfortunately for defendant, the Act is not retroactive. United States v. Bell, 624 F.3d 803, 814 (7th Cir. 2010) (holding that Fair Sentencing Act not retroactive under 1 U.S.C. § 109, which provides that “[t]he repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act so shall expressly provide. . . .”). That means that persons like defendant who were sentenced before

the Act took effect cannot benefit from the changes it made in the prior law.

Even if the Act were retroactive, it would be unlikely that defendant would be entitled to any reduction in his sentence. At his 2006 sentencing, a quantity of 1.5 kilograms of crack cocaine put a defendant in level 38, the highest bracket in the applicable drug quantity table in U.S.S.G. § 2DE1.1, so it was not necessary to undertake a close examination of the amount of crack cocaine for which defendant was responsible. It is obvious from the presentence report that the conspiracy in which defendant participated was involved with far more than the 4.5 kilograms of crack cocaine now required for an offense level of 38.

Defendant adds another argument under Kimbrough v. United States, 552 U.S. 85 (2007), to the effect that in resentencing, a court may take into consideration any policy differences it has with the advisory guidelines. This is true, but irrelevant because I have no authority to resentence defendant.

ORDER

IT IS ORDERED that defendant Pedro Zamora's motion for a reduction in his

sentence under 18 U.S.C. § 3582(c)(2) is DENIED.

Entered this 3d day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge