

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY ROBINSON,

Defendant.

ORDER

08-cv-152-bbc

Defendant Timothy Robinson has written to the court to ask that it accept his letter as an 18 U.S.C. § 3582 motion for reduction of his sentence. He believes he is entitled to a reduction in his sentence under the Fair Sentencing Act, 124 Stat. 2372. For the purpose of deciding whether he has any possible claim for relief, I will accept the letter as a motion. It is not a proper § 3582 motion, however, because he is not asking for a reduction of his sentence on the ground that the Sentencing Commission has lowered a sentencing guideline that applies to him, which is the only kind of motion that can be brought under § 3582. The only motion that encompasses the kind of relief that defendant is seeking is a post conviction motion under 28 U.S.C. § 2255, but he has already brought two such motions and cannot proceed on another one unless he has been granted leave to do so by the Court of Appeals for the Seventh Circuit. § 2255(h).

The procedural vehicle that defendant chooses is of no consequence in this case

because he has no claim on which he can succeed. He was found ineligible for relief under the Fair Sentencing Act when he appealed his sentence in 2010 on the ground that the Act had not been held to be retroactive. Although the Supreme Court has now held that the Act has retroactive effect, Dorsey v. United States, 132 S. Ct. 2321 (2012), the decision does help defendant. The Court held that the Act applies only to offenders who committed crimes before the Act was made retroactive and who were sentenced *after* the date on which it took effect (August 3, 2010). Id. at 2326.

Defendant was sentenced in 2009. He was resentenced on July 21, 2010 after he moved for post conviction relief under 28 U.S.C. § 2255, contending that his trial counsel had provided constitutionally ineffective counsel by not filing an appeal on defendant's behalf. I agreed with defendant, vacated his original sentence and reimposed the same sentence on him so that he could take a timely appeal. Because defendant was not sentenced after August 3, 2010, the decision in Dorsey does not apply to him.

ORDER

IT IS ORDERED that defendant Timothy Robinson's motion for a reduction of his sentence under 18 U.S.C. § 3582(c)(2) is DISMISSED for lack of jurisdiction.

Entered this 5th day of December, 2013.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge