

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL SCATES,

Defendant.

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OPINION AND ORDER

08-cr-27-bbc

Defendant Michael Scates has moved under 18 U.S.C. § 3582(c)(2) for modification of his sentence, seeking a reduction on the basis of the decision in United States v. Wren, 706 F.3d 861 (7th Cir. 2013), which interpreted the 2011 amendments to the crack cocaine sentencing guidelines. His motion must be denied because it is an impermissible successive petition.

Defendant was convicted in August 2008 of possessing more than five grams of crack cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), and sentenced to a term of imprisonment of 100 months. He moved for a reduction of his sentence when he learned that Congress was considering a reduction in the guidelines for crack cocaine offenses. Dkt. #63. That motion was denied as premature, but his sentence was amended to 80 months in November 20, 2011, after the 2010 retroactive amendments to the crack cocaine sentencing guidelines had taken effect. In March 2013, defendant moved for an

additional reduction of his sentence under 18 U.S.C. § 3582, arguing that retroactive amendment 750 entitles him to yet another reduction in his sentence.

## OPINION

Unfortunately for defendant, he cannot file a second motion for a reduction in his sentence under 18 U.S.C. § 3582(c)(2), so long as he is relying on the same amendment. The Court of Appeals for the Seventh Circuit held in United States v. Redd, 630 F.3d 649, 651 (7th Cir. 2011), that just as district courts have no continuing power to revise sentences once they have been imposed, they have no power to consider repeated requests for revision of a reduced sentence based on the same amendment to the guidelines. This rule would not apply to a new motion if it were brought under a new amendment of the guidelines lowering the sentencing ranges, but defendant is not relying on a new amendment that affects defendant's sentencing range. He rests his motion upon the court of appeals' decision in Wren.

This decision cannot help defendant. It dealt with a specific situation in which the defendants had been sentenced above the statutory floor, had had their sentences reduced in recognition of their substantial assistance and had then been the beneficiaries of a retroactive change in a guideline that authorized a reduction in their sentences. That is not defendant's situation. His previous sentencing range and sentence were higher than the minimum mandatory sentence to which he is subject. Even if Wren were applicable, he could not take advantage of it because the issuance of a new decision by the court of appeals

does not revive a prior motion or authorize this court to reconsider the reduced sentence.

In the absence of a new amendment, defendant is barred from filing a new motion.

ORDER

IT IS ORDERED that defendant Michael Scates's motion for a reduction in his sentence under 18 U.S.C. § 3582, dkt. #67, is DENIED.

Entered this 29th day of April, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge