

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALVIN MARTIN,

Defendant.

OPINION AND ORDER

09-cr-57-bbc

Defendant Alvin Martin has moved under 18 U.S.C. § 3582 for a second reduction in the sentence imposed on him on October 13, 2009. He believes he is entitled to a reduction under the Fair Sentencing Act, but he is wrong.

Defendant pleaded guilty on August 4, 2009, to one count of possessing cocaine base (crack cocaine) in violation of 21 U.S.C. § 841(a)(1) and was sentenced to a term of imprisonment of 120 months on October 13, 2009. At the time of his sentencing, he received the benefit of the retroactive guideline amendment for crack cocaine that took effect on November 1, 2007.

In August 2010, Congress passed the Fair Sentencing Act, which reduced the penalties for defendants convicted of crack cocaine offenses after the bill took effect. In June 2012, the United States Supreme Court held in Dorsey v. United States, 132 S. Ct. 2321 (2012), that the Act's new, lower mandatory minimums applied to the post-Act sentencing

of pre-Act offenders. The Court did not hold that they applied to persons like defendant who were convicted and sentenced before the Fair Sentencing Act was enacted. Therefore, unless Congress were to make the law retroactively applicable to every person convicted of crimes involving crack cocaine, whenever the person was sentenced, defendant cannot benefit from the Act.

ORDER

IT IS ORDERED that defendant Alvin Martin's motion for a reduction of sentence under 18 U.S.C. § 3582 is DENIED.

Entered this 10th day of May, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge