

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLTON A. HUNTER,

Defendant.  
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ORDER

10-cr-29-bbc

Defendant Carlton A. Hunter has filed a motion for reconsideration of his motion for a reduction of sentence under 18 U.S.C. § 3582(c)(2), in light of the Supreme Court's recent decision in Dorsey v. United States, 132 S. Ct. 2321 (2012). The motion must be denied.

Defendant's original motion was denied on December 15, 2011; his motion for reconsideration was filed on July 17, 2012, so it is untimely. United States v. Redd, 630 F.2d 649, 650 (7th Cir. 2011) (motion for reconsideration must be filed within time permitted for appeal of denial of motion.) Even if it were not, it would have to be denied because defendant has not shown any reason why the denial of his motion was incorrect. Defendant asked for a reduction under § 3582(c)(2), a provision that applies only to changes in the sentencing guidelines. As I explained to defendant in the December 15 order, his

sentence was determined by statute, not by the guidelines, because he was subject to a mandatory minimum sentence under 21 U.S.C. § 841(b)(1).

Dorsey may supply a ground for defendant to file a motion for post conviction relief under 28 U.S.C. § 2255, even though his sentence was imposed more than a year ago. Defendant was sentenced on August 12, 2010. His time for filing a § 2255 motion expired on August 22, 2011, unless he can show that the holding in Dorsey falls within § 2255(f)(3), which establishes a new one-year filing period running from “the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.”

In Dorsey, the Supreme Court interpreted the Fair Sentencing Act, 124 Stats. 2372, which Congress enacted to reduce the crack-to-powder cocaine disparity from 100 to 1 to 18 to 1. The Act took effect on August 3, 2010; in it, Congress directed the Sentencing Commission to make conforming amendments to the guidelines to achieve consistency with the new law, and to do so within 90 days. The commission promulgated emergency guideline amendments that went into effect November 1, 2010.

Before Dorsey, a number of courts had interpreted the new law as not applying to offenders who committed their drug crimes before August 3, 2010, even if they were not sentenced until after that date. Dorsey’s situation was like defendant’s; he committed his

crime before the Act took effect; he was sentenced afterwards, but before November 1, 2010, when the new guidelines went into effect. Dorsey asked the sentencing judge to sentence him as if the new guidelines had been promulgated but the judge refused the request on his understanding that the old minimum sentence applied in Dorsey's situation.

The Supreme Court noted the different conclusions reached by the appellate courts addressing claims like Dorsey's and discussed the various arguments for and against Dorsey's position that the Act should apply to persons in his situation who had committed crimes before August 3, 2010 but had been sentenced after the date (and before November 1, 2010). It concluded that offenders who committed their crimes before August 3, 2010 but were sentenced between then and November 1, 2010 should have received the benefit of the change in the law.

Dorsey's case came before the Supreme Court on appeal from the original sentence; defendant's time for appeal ran long ago and was foreclosed to him in any event because he agreed in his plea agreement to waive any appeal of a sentence shorter than 108 months. Defendant's only recourse is a motion for post conviction relief under § 2255. If I find that the ruling in Dorsey represents recognition of a right for the first time, defendant may be able to have his claim heard. I cannot say at this time whether defendant could prevail on such a motion, but I know of no other way in which he might obtain the relief he is seeking.

ORDER

IT IS ORDERED that defendant Carlton A. Hunter's motion for reconsideration of his motion for a reduction of sentence under 18 U.S.C. § 3582(c)(2) is DENIED.

Defendant is free to file a motion for post conviction relief under 28 U.S.C. § 2255, but he should do so promptly, if he wishes to pursue this option.

Entered this 24th day of July, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge