

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

LEROY TAYLOR

CRIMINAL ACTION NO. 91-634-01

MEMORANDUM

YOHN, J.

May 16, 2012

Currently before me is defendant Leroy Taylor's motion for a reduction of his sentence under 18 U.S.C. § 3582(c)(2). For the reasons that follow, I will deny his motion.

On July 9, 1992, a jury found Taylor guilty of two counts of possession with intent to distribute cocaine base ("crack"), in violation of 21 U.S.C. § 841(a)(1), and one count of possession of ammunition by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Under the applicable Sentencing Guidelines, Taylor's offense level was initially determined to be 28 (under the drug quantity table in U.S.S.G. § 2D1.1, Taylor's base offense level was 26, which was increased by 2 levels for possession of a firearm). But because Taylor qualified as a career offender under U.S.S.G. § 4B1.1, he was assigned an offense level of 34 and a criminal history category of VI, which yielded a guideline range of 262 to 327 months, and on August 18, 1992, I sentenced him to 284 months of imprisonment, as well as 4 years of supervised release and a \$150 special assessment.

On May 12, 2008, after the United States Sentencing Commission retroactively lowered

the base offense levels for most crack offenses by two levels,¹ Taylor filed a motion for a reduction of his sentence under 18 U.S.C. § 3582(c)(2). I denied his motion, concluding that he was not eligible for such a sentence reduction, because the applicable amendment (Amendment 706) did not alter the offense levels that apply to career offenders under U.S.S.G. § 4B1.1(b) and his applicable guideline range thus remained unchanged. *See United States v. Taylor*, No. 91-634, 2008 WL 4899460 (E.D. Pa. Nov. 10, 2008). The Third Circuit subsequently reached the same conclusion in *United States v. Mateo*, holding that “Amendment 706 simply ‘provides no benefit to career offenders’” because it has no effect on the sentencing range determined under the career-offender guidelines in § 4B1.1(b). 560 F.3d 152, 155 (3d Cir. 2009) (quoting *United States v. Forman*, 553 F.3d 585, 589 (7th Cir. 2009)).

As of November 1, 2011, the Sentencing Commission has again retroactively lowered the offense levels for crack offenses,² and Taylor has again filed a motion for a reduction of his sentence under 18 U.S.C. § 3582(c)(2). As before, I must conclude that Taylor is ineligible for such a sentence reduction.

As a general rule, a court “may not modify a term of imprisonment once it has been

¹ Amendment 706 to the Sentencing Guidelines, which took effect on November 1, 2007, revised the crack quantities in the drug quantity table in § 2D1.1(c) and thereby decreased by two levels the base offense levels for most crack offenses. *See* U.S.S.G. app. C, amend. 706. It was made retroactive as of March 3, 2008. *See id.* app. C, amend. 713.

² In accordance with the emergency directive contained in the Fair Sentencing Act of 2010, which act, among other things, increased the threshold amounts of crack that trigger mandatory minimum prison sentences, *see* Pub. L. No. 111-220, 124 Stat. 2372, the Sentencing Commission promulgated Amendment 748, a temporary, emergency amendment that took effect on November 1, 2010, and reduced the base offense levels for crack offenses, *see* U.S.S.G. app. C, amend. 748. Amendment 750 “re-promulgate[d] as permanent the temporary, emergency amendment,” *id.* app. C, amend. 750 (reason for amendment), and was made retroactive as of November 1, 2011, *see id.* app. C, amend. 759.

imposed.” 18 U.S.C. § 3582(c). Congress has, however, provided an exception to that rule “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” *Id.* § 3582(c)(2). In that case, a court may “reduce the term of imprisonment . . . *if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.*” *Id.* (emphasis added). The applicable policy statement, which is set forth in U.S.S.G. § 1B1.10 and which is binding on courts, *see Dillon v. United States*, 130 S. Ct. 2683 (2010), provides that a sentence reduction resulting from the application of a retroactive amendment to the Sentencing Guidelines is not consistent with the policy statement if the amendment “does not have the effect of lowering the defendant’s applicable guideline range.” U.S.S.G. § 1B1.10 (a)(2)(B). Here, the applicable amendment (Amendment 750) revised the crack quantities in the drug quantity table in § 2D1.1(c) and thereby lowered the base offense levels for most crack offenses. But, like Amendment 706, Amendment 750 did not alter the offense levels that apply to career offenders under § 4B1.1(b), and thus it does not have the effect of lowering Taylor’s applicable guideline range. As a result, a reduction in Taylor’s sentence would not be consistent with the applicable policy statement, and thus Taylor is not eligible for a sentence reduction under 18 U.S.C. § 3582(c)(2).

An appropriate order accompanies this memorandum.

