IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	Case No. 5:01CR30075-001
	)	
v.	)	**OPINION AND ORDER**
	)	
RICHARD L. FULTON,	)	By: James P. Jones
	)	United States District Judge
	)	
Defendant.	)	

Richard L. Fulton, Pro Se.

Before the court is the defendant's pro se Motion for Reconsideration of the court's prior Order denying his Motion for Sentence Reduction. For the following reasons, the motion will be denied.

The defendant, Richard L. Fulton, was convicted pursuant to a guilty plea to conspiracy to distribute and to possess with intent to distribute crack cocaine and possession of a firearm by a felon. He was sentenced by this court (Michael, J.) in 2003 to a total of 360 months imprisonment. His convictions and sentence were affirmed on appeal. *United States v. Fulton*, No. 03-4436 (4th Cir. Jan. 27, 2004) (unpublished).

On November 2, 2012, the defendant filed, by counsel, a Motion to Reduce Sentence, requesting that his sentence be reduced pursuant to 18 U.S.C.A. §

3582(c)(2) (West 2000 & Supp. 2012), on account of the retroactive reduction in the guideline ranges for crack cocaine under Amendment 750 of the U.S. Sentencing Guidelines. The court directed the government to respond and provided that counsel for the defendant could reply within seven days of service of the government's response. The government filed a response, objecting to any reduction in the defendant's sentence. No reply was filed on behalf of the defendant and on November 30, 2012, the court entered an order denying the Motion to Reduce Sentence. On December 14, 2012, the defendant filed the present pro se Motion for Reconsideration.

As shown by the Judgment entered in Fulton's case on May 21, 2003, at Fulton's sentencing the court adopted the factual findings and guideline application in the presentence report ("PSR"). That report calculated that Fulton had a Base Offense Level of 38, based upon the attribution to Fulton of "at least 1.5 kilograms of cocaine base." (PSR ¶ 13.) In the Statement of Reasons contained in the Judgment, the court stated that the sentence was imposed because "Defendant has an extensive criminal history, and was the leader of conspiracy, that was responsible for over 25 kilos of cocaine base." (J. 8.)

At the time of Fulton's sentencing, a Base Offense Level of 38, the highest level under the Drug Quantity Level, represented 1.5 kilograms or more of cocaine base. U.S. Sentencing Guidelines § 2D1.1(c)(1) (2003). Pursuant to Amendment

750, the Base Offense Level of 38 now represents 8.4 kilograms or more of cocaine base. U.S. Sentencing Guidelines § 2D1.1(c)(1) (2012). Because at sentencing more than 8.4 kilograms of crack cocaine was attributed to the conspiracy of which Fulton was found to be the leader, it would not be appropriate to reduce his sentence under Amendment 750.

Accordingly, it is **ORDERED** that the Motion for Reconsideration (ECF No. 84) is DENIED. The clerk is directed to file under seal copies of the court's Statement of Reasons and the PSR, which were provided to the court by the court's probation office.

ENTER: December 17, 2012

/s/ James P. Jones
United States District Judge