

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA**  
DANVILLE DIVISION

UNITED STATES OF AMERICA,

v.

KARY LEE TAYLOR, JR.,

*Defendant.*

CASE NO. 4:99-cr-70080-2

ORDER

JUDGE NORMAN K. MOON

This matter is before the Court upon Defendant's Motion to Reduce Sentence, filed January 19, 2010 (docket no. 87). For the reasons that follow, Defendant's Motion will be and hereby is DENIED.

The Court originally sentenced Defendant to a term of imprisonment of 188 months in a Judgment dated August 13, 2001 (docket no. 67). By Court Order dated June 3, 2008 (docket no. 84), the Court subsequently reduced Defendant's base offense level by two points pursuant to 18 U.S.C. § 3582(c)(2), and reduced his sentence accordingly to 151 months. Defendant filed a Motion for Reconsideration of the June 3 Order (docket no. 85), arguing that a further reduction in sentence was warranted under the factors set forth in 18 U.S.C. § 3553(a), and raising miscellaneous challenges to his sentence, including, *inter alia*, a dispute regarding the veracity of testimony received at trial. On August 5, 2008, the Court denied Defendant's Motion for Reconsideration (docket no. 86), stating that it did consider the factors set forth in 18 U.S.C. § 3553(a) in the first instance, and further, that it did not have the authority to consider Defendant's miscellaneous challenges to his sentence in a motion pursuant to 18 U.S.C. § 3582(c)(2).

In the instant Motion, Defendant asks the Court “whether or not [he] can receive any support under the one to one ratio law,” arguing that this law was not available at the time of Defendant’s sentencing. Defendant states that “now that it is [available] I am asking for your support in this matter.”

Because “[t]he law closely guards the finality of criminal sentences against judicial ‘change of heart,’” *United States v. Goodwyn*, --- F.3d ----, No. 09-7316, slip op. at 4 (4th Cir. Feb. 26, 2010) (citing *United States v. Layman*, 116 F.3d 105, 109 (4th Cir. 1997)), a district court only has limited jurisdiction to change a sentence after it has been imposed. *See United States v. Nguyen*, 211 F. App’x 191, 193 (4th Cir. 2006). The Court may do so only: (1) upon motion of the Director of the Bureau of Prisons if extraordinary and compelling reasons warrant a reduction or other very limited circumstances apply; (2) under the express authority of Rule 35 of the Federal Rules of Criminal Procedure, which permits a court to correct a clear error within seven days of sentencing or reduce a sentence upon a substantial assistance motion by the Government; or (3) when a defendant is sentenced to a term of imprisonment based on a sentencing range subsequently lowered by the United States Sentencing Commission. *See* 18 U.S.C. § 3582(c). None of these circumstances applies here. Defendant cites to *Blakely v. Washington*, 542 U.S. 296 (2004), *Gall v. United States*, 552 U.S. 38 (2007), and *United States v. Booker*, 543 U.S. 220 (2005), in support of the argument that the Court has “discretion in this.” This is not the case, nor do the authorities cited by Defendant substantiate his argument.

When referring to the “one to one ratio law,” Defendant presumably refers to the position articulated by the United States Department of Justice in April 2009, which stated that it believes the sentencing disparity between crack cocaine and powder cocaine offenses should be eliminated. *See e.g.*, Lanny A. Breuer, Assistant Attorney General for the Criminal Division of the U.S. Department

of Justice, Testimony before the U.S. Senate (April 29, 2009), <http://judiciary.senate.gov/pdf/09-04-29BreuerTestimony.pdf>. This change in policy by the Department of Justice has not resulted in a change by the United States Sentencing Commission, or the courts, which requires the retroactive application of a one to one ratio for crack and powder cocaine. *See e.g., United States v. Roy*, Nos. 5:04-cr-30018 and 5:10-cv-80226, 2010 WL 391825, at \*2 (W.D. Va. Feb. 3, 2010); *United States v. Dixon*, No. 3:08-cr-00032, 2010 WL 342551, at \*2 (S.D. W.Va. Jan. 28, 2010). To the extent that Defendant instead intends to refer to the “Fairness in Cocaine Sentencing Act of 2009,” H.R. 3245, this is a bill that has been introduced in Congress, but has not been enacted by Congress, and therefore does not provide Defendant a basis for relief. Therefore, Defendant’s Motion to Reduce Sentence will be and hereby is DENIED.

It is so ORDERED.

The Clerk of the Court is hereby ORDERED to send a certified copy of this Order to all counsel of record, and to Defendant.

Entered this 1st day of March, 2010.

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/s/  
NORMAN K. MOON  
UNITED STATES DISTRICT JUDGE