

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

<b>UNITED STATES,</b>	)	
	)	
	)	<b>Criminal Case No. 5:08CR00017</b>
<b>v.</b>	)	
	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>ANTONIO JOHN WALL,</b>	)	
	)	
<b>Defendant.</b>	)	<b>By: Samuel G. Wilson</b>
	)	<b>United States District Judge</b>
	)	

This matter is before the court on the motion of Antonio John Wall pursuant to 18 U.S.C. § 3582(c)(2) seeking a reduction of his sentence under United States Sentencing Guideline Amendment 706 and the Fair Sentencing Act of 2010, Pub. L. No. 111-220, §§ 2(a), 8, 124 Stat. 2372, 2372, 2374, which, in part, raised the threshold required to trigger the five-year mandatory minimum sentence for cocaine base from 5 grams to 28 grams and the ten-year mandatory minimum from 50 grams to 280 grams; and called for a temporary, emergency guideline amendment promulgated by the United States Sentencing Commission pursuant to that Act, which became effective November 1, 2010. The Court denies Wall's motion for reduction because his sentence is the product of a mandatory minimum, and the Fair Sentencing Act does not apply retroactively under the circumstances present here.

**I.**

On December 11, 2008, the court sentenced Wall to two concurrent sentences of 120 months for distributing cocaine base and possessing with intent to distribute 50 grams or more of cocaine base in violation of 21 U.S.C. § 841(a)(1). Guideline Amendment 706 was effective March 3, 2008. Consequently, at the time the court sentenced Wall, Guideline Amendment 706 was already in place. However, the "50 grams or more of cocaine base" offense carried a

mandatory minimum of 10 years.

## II.

Section 3582(C)(2) permits the court to reduce a term of imprisonment based upon a sentencing range that the United States Sentencing Commission has subsequently lowered if the Commission specifies that its action is retroactive. But Amendment 706's retroactivity has no significance here. Not only was Amendment 706 in effect at the time the court sentenced Wall, Wall is serving a mandatory minimum sentence unaffected by Amendment 706.

Although Congress passed the Fair Sentencing Act, effective August 3, 2010, which raised the cocaine base weight threshold for mandatory minimum sentences under 21 U.S.C. § 841, the overwhelming weight of authority holds that the Act is not retroactive. See, e.g., United States v. Nelson, 09-4297, slip op. at 3 (4th Cir. Nov. 18, 2010); United States v. Wilson, No. 10-4160, slip op. at 4 (4th Cir. Nov. 12, 2010); United States v. Mcallister, No. 10-4387, slip op. at 4 n. (4th Cir. Nov. 12, 2010); United States v. Hall, 2010 U.S. App. LEXIS 23423, at \*7 (9th Cir. Nov. 10, 2010); United States v. Lewis, 2010 U.S. App. LEXIS 22604, at \*8 (10th Cir. Oct. 29, 2010); United States v. Glover, 2010 U.S. App. LEXIS 22211, at \*5 (2d Cir. Oct. 27, 2010); United States v. Bell, 2010 U.S. App. LEXIS, at \*27 (7th Cir. Oct. 20, 2010); United States v. Brown, 2010 U.S. App. LEXIS 21135, at \*2 (8th Cir. Oct. 12, 2010); United States v. Carradine, 621 F.3d 575, 2010 U.S. App. LEXIS 19741, at \*12-13 (6th Cir. Sept. 20, 2010).<sup>1</sup> Though the court finds it unnecessary to decide here whether the Act applies to defendants awaiting

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<sup>1</sup> The court notes that the United States Sentencing Commission did not make the amended sentencing guidelines, effective November 1, 2010, retroactive. See U.S. SENTENCING GUIDELINES MANUAL § 1B1.10(c) (2010) (listing out retroactive amendments and not including the Fair Sentencing Act); United States v. Kornegay, 2010 U.S. Dist. LEXIS 118674, at \* 2 (E.D.N.C. Nov. 8, 2010) (noting that the amended guidelines were not made retroactive).

sentencing whose offenses were committed before August 3, 2010, see United States v. Douglas, 2010 U.S. Dist. LEXIS 114464 (D. Me. Oct. 27, 2010), it readily concludes that the Act does not apply to sentences imposed before that date.

**III.**

For the above-stated reasons, the court denies Wall's §3582(c)(2) motion.

**ENTER:** This 19th day of November, 2010.

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UNITED STATES DISTRICT JUDGE

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