

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 12-10223

D.C. Docket No. 9:06-cr-80081-DTKH-3

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

KELVIN FERGUSON,

Defendant–Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(August 24, 2012)

Before BARKETT and PRYOR, Circuit Judges, and LAWSON,* District Judge.

PER CURIAM:

* Honorable Hugh Lawson, United States District Judge for the Middle District of Georgia, sitting by designation.

Kelvin Ferguson appeals from the denial of his motion to modify his sentence pursuant to 18 U.S.C. § 3582(c)(2) based on Amendment 750 to the Sentencing Guidelines, which lowered the base offense level for certain crack cocaine offenses to conform the guidelines to the Fair Sentencing Act of 2010, Pub.L. No. 111–220, 124 Stat. 2372. The government now recognizes that Ferguson is eligible for relief under § 3582(c)(2). The government acknowledges that as a result of the application of Amendment 750, Ferguson’s offense level should be a 34 resulting in a guidelines range of 262 to 327 months’ imprisonment, which is lower than his current sentence, which is based on an offense level of 35, with a corresponding guidelines range of 292 to 365 months’ imprisonment.¹

Accordingly, we hereby vacate the district court’s order and remand for resentencing.

VACATED and REMANDED FOR RESENTENCING.

¹ We also note that, as it did at Ferguson’s original and prior resentencing, the government acknowledges that Ferguson also is eligible, pursuant to U.S.S.G. § 1B1.10(b)(2)(B), for a proportional reduction below the applicable guidelines range based on his substantial assistance.