

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 24, 2011

Lyle W. Cayce
Clerk

No. 08-40547
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DONNIE DARRELL BOOKER,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas

Before DAVIS, SMITH, and SOUTHWICK, Circuit Judges.

PER CURIAM:

Donnie Booker, federal prisoner #09267-078, was convicted by a jury of one count of conspiracy to manufacture, distribute, or possess with intent to manufacture, distribute, or dispense 50 grams or more of cocaine base (crack cocaine) in violation of 21 U.S.C. §§ 841(a)(1) and 846 (Count 1) and two counts of distribution of crack cocaine in violation of § 841(a)(1) (Counts 7 and 13). The district

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court sentenced him to concurrent terms of 151 months' imprisonment on each count, five years' supervised release on Counts 1 and 13, and three years of supervised release on Count 7. Booker appeals the order granting a sentence reduction that is less than the one he sought based on the amendments to the crack cocaine guidelines.

The website of the Bureau of Prisons shows that Booker was released from prison on March 3, 2010. Where a defendant has begun serving a term of supervised release, the appeal of the denial of his § 3582(c)(2) motion is moot. *United States v. Boston*, No. 08-10341, 2011 U.S. App. LEXIS 6036, at *4-*6 (5th Cir. Mar. 23, 2011) (per curiam) (unpublished). Here, as with the defendant in *Boston*, Booker makes no mention of his term of supervised release and does not argue that it should be terminated; his arguments pertain only to relief under § 3582(c)(2). Any termination of supervised release must be sought by a motion under 18 U.S.C. § 3583(e)(1). *Boston*, 2011 U.S. App. LEXIS 6036, at *5-*6.

The judgment of conviction is AFFIRMED.¹

¹ Booker's motion for appointment of counsel is DENIED. His motion to remand for evidentiary hearing is DENIED. His motion for bail pending appeal is DENIED. The government's motion for summary affirmance is DENIED as unnecessary. The government's motion for extension of time to file its brief is DENIED as unnecessary.