

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

F I L E D
July 15, 2009

No. 08-50585
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

WILLIAM COURTNEY CONTEE,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:06-CR-151-1

Before DAVIS, GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

William Courtney Contee, federal prisoner # 34683-177, pleaded guilty in 2006 to conspiracy to distribute and to possess with the intent to distribute 50 grams or more of crack cocaine, in violation of 21 U.S.C. § 846, and he was sentenced to 250 months. He now appeals the reduced 240-month sentence he received following the district court's sua sponte 18 U.S.C. § 3582(c)(2) motion

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

based on the retroactive amendments to the crack cocaine guidelines. The sentence imposed represents the relevant statutory mandatory minimum.

For the first time on appeal, Contee argues that the mandatory minimum strips district courts of the power to consider the sentencing factors of 18 U.S.C. § 3553(a) and is therefore unconstitutional under *United States v. Booker*, 543 U.S. 220 (2005). His claim is without merit. A district court cannot impose a sentence lower than the statutory minimum following the grant of a § 3582(c)(2) motion. *See Kimbrough v. United States*, 128 S. Ct. 558, 574 (2007); *United States v. Gomez-Herrera*, 523 F.3d 554, 559 (5th Cir.), *cert. denied*, 129 S. Ct. 624 (2008). Contee makes no argument that he meets the limited circumstances for a sentence below the statutory minimum. *See United States v. Harper*, 527 F.3d 396, 411 (5th Cir.), *cert. denied*, 129 S. Ct. 212 (2008). Accordingly, the district court's order imposing the statutory minimum sentence is AFFIRMED.