

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

United States Court of Appeals
Fifth Circuit

FILED

June 17, 2011

Lyle W. Cayce
Clerk

No. 10-30713

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

TROY L. FRAZIER,

Defendant-Appellant

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:09-CR-29-1

Before KING, BENAVIDES, and ELROD, Circuit Judges.

PER CURIAM:*

Troy L. Frazier pleaded guilty to distribution of 50 grams or more of cocaine base. The district court imposed the mandatory statutory minimum sentence of 120 months in prison. Frazier argues that the Fair Sentencing Act of 2010 (FSA), Pub. L. No. 111-220, § 2(a)(1), 124 Stat. 2372 (Aug. 3, 2010), should be applied to cases on direct appeal and seeks to have his sentence vacated and remanded for resentencing in accordance with the provisions of the FSA.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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The FSA, which became effective on August 3, 2010, amended the Controlled Substances Act and Controlled Substances Import and Export Act by resetting the drug quantities required to trigger mandatory minimum sentences. FSA, Pub. L. No. 111-220, § 2(a)(1), 124 Stat. 2372 (Aug. 3, 2010). Among other things, it amended § 841(b)(1)(A)(iii), by increasing from 50 grams to 280 grams the amount of crack cocaine a defendant must possess before he is subject to a ten-year mandatory minimum sentence. *Id.*

In the instant case, there is no question that Congress repealed and replaced § 841 (b)(1)(A)(iii), by enacting the FSA. However, the FSA is silent on the issue of retroactivity. *See* FSA, Pub. L. No. 111-220, § 2(a)(1), 124 Stat. 2372 (Aug. 3, 2010). Frazier argues that the retroactivity issue has not been addressed in this circuit. Subsequent to the filing of Frazier's brief, this court issued a published decision holding that the FSA does not apply to defendants who were sentenced prior to its enactment. *See United States v. Doggins*, 633 F.3d 379, 384 (5th Cir. 2011).

AFFIRMED.