

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 09-2345

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United States of America,	*	
	*	
Plaintiff - Appellee,	*	Appeal from the United States
	*	District Court for the Western
v.	*	District of Missouri.
	*	
Deandre Scroggins,	*	[UNPUBLISHED]
	*	
Defendant - Appellant.	*	

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Submitted: June 14, 2010  
Filed: June 23, 2010

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Before MURPHY, BEAM, and BENTON, Circuit Judges.

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PER CURIAM.

In 2004, Deandre J. Scroggins was found guilty of possession with intent to distribute crack cocaine. The district court determined a Guidelines sentencing range of 168 to 210 months' imprisonment and imposed a sentence of 175 months. After the Sentencing Commission reduced by two levels the offense level applicable to crack cocaine offenses in Amendments 706 and 711 of the Guidelines, Scroggins moved for modification of his sentence under 18 U.S.C. § 3582(c)(2). The district

court<sup>1</sup> granted a two-level reduction, reducing the advisory range to 135 to 168 months. The district court re-sentenced Scroggins to 135 months' imprisonment.

Scroggins appeals, arguing that the district court erred when it considered the Guidelines mandatory in applying § 3582(c)(2) and the policy statements in U.S.S.G. § 1B1.10. This argument is foreclosed by this court's decision in *United States v. Starks*, 551 F.3d 839 (8th Cir. 2009), *cited by United States v. Dillon*, 572 F.3d 146, 150 (3d Cir. 2009), *aff'd*, No. 09-6338, slip op. at 14 (S. Ct. June 17, 2010). As the Supreme Court held, "proceedings under § 3582(c)(2) do not implicate the Sixth Amendment right to have essential facts found by a jury beyond a reasonable doubt." *Id.* at 11. Therefore, the district court correctly applied 18 U.S.C. § 3582(c) and U.S.S.G. § 1B1.10(b)(2)(A). The judgment of the district court is affirmed.

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<sup>1</sup> The Honorable Ortrie D. Smith, United States District Court for the Western District of Missouri.