

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

MARLON McNEALY,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)

Case No. 1:11-cv-2769-SLB

MEMORANDUM OPINION

The magistrate judge has entered a report and recommendation that the petitioner's motion for sentence reduction under the Fair Sentencing Act of 2010 be denied. The parties were allowed therein fourteen (14) days in which to file objections to the recommendations made by the magistrate judge. No objections have been filed by petitioner or respondent.

After careful consideration of the record in this case and the magistrate judge's report and recommendation, the court hereby **ADOPTS** the report of the magistrate judge except that this court specifically declines to make any findings as to the retroactivity of the Fair Sentencing Act of 2010 to defendants who, like petitioner, both committed their offenses and were sentenced before the law took effect. The court notes that, since the entry of the report and recommendation, the

United States Supreme Court addressed a similar but distinct issue, ruling in *Dorsey v. United States*, 132 S. Ct. 2321 (2012), that the Fair Sentencing Act applies to defendants who committed their offenses before the law took effect, but were sentenced afterwards. The court finds that applying the Fair Sentencing Act to petitioner would not allow for a reduction of his sentence, as the weight of crack cocaine found attributable to him would still greatly exceed the amount necessary to trigger a mandatory life sentence.

The court **ACCEPTS** the recommendation of the magistrate judge that the motion for a sentence reduction under the Fair Sentencing Act of 2010 be denied.

A separate Order in conformity with this Memorandum Opinion will be entered contemporaneously herewith.

DONE this 30th day of September, 2013.



SHARON LOVELACE BLACKBURN
CHIEF UNITED STATES DISTRICT JUDGE