

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ARTHUR SIDNEY PRUITT,)
)
 Movant,)
)
 v.)
)
THE UNITED STATES OF)
AMERICA,)
)
 Respondent.)

**7:11-cv-8030-AKK-RRA
7:10-cr-0322-AKK-RRA**

MEMORANDUM OPINION

The magistrate judge entered a report and recommendation, recommending that the movant’s motion to vacate his sentence be granted and that he be re-sentenced pursuant to the Fair Sentencing Act. The report pointed out that the government agreed that re-sentencing is required in this case.

In response to the report and recommendation, the respondent maintains that “[a]lthough the Government agrees that Pruitt is entitled to a resentencing in accordance with the Fair Sentencing Act, the Court must address Pruitt’s other claims as well.” In support of this contention, the respondent has cited law which states that the district court is required to resolve all habeas issues, even ones that appear to be moot. The underlying reasoning supposes that if there is an appeal and the court is wrong on the issue it decided, the case would have to be remanded

for the trial court to resolve the other issues. In this case, however, there will be no appeal. The court will re-sentence the defendant, as the defendant asks, and the government agrees should happen. Any appeal would concern the re-sentencing, not the sentencing which is the subject of this petition. Thus, deciding the other issues is unnecessary. The law cited by the government is inapplicable to the circumstances of this case.¹

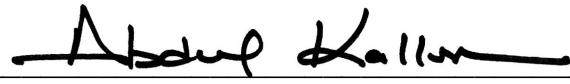
The court has considered the entire file in this action, together with the report and recommendation and the government's response to the report and recommendation, and has reached an independent conclusion that the report and recommendation is due to be adopted and approved. Accordingly, the court hereby adopts and approves the findings and recommendation of the magistrate judge as the findings and conclusions of the court.

The motion to vacate is due to be **GRANTED**, the sentence is due to be **VACATED**, and Pruitt is due to be resentenced pursuant to the Fair Sentencing Act of 2010.

An appropriate order will be entered.

¹To the extent that the court is wrong, the issue is **MOOT** since Pruitt's other claims are due to be **DENIED** for the reasons outlined in the Government's response to Pruitt's motion. See Doc. 9.

DONE this 31st day of August, 2012.

A handwritten signature in black ink, appearing to read "Abdul Kallon", written over a horizontal line.

ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE