

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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|---------------------------|---|-------------------|
| CHARLES JAMES, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 4:13CV306 HEA |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Respondent. |) | |

OPINION, MEMORANDUM AND ORDER

In December 2009 petitioner was sentenced to 120 months’ imprisonment for possession with intent to distribute 50 grams or more of cocaine base in violation of 21 U.S.C. § 841(a). Because the quantity of cocaine base exceeded 50 grams, defendant was sentenced to the statutorily required minimum sentence of ten years. 21 U.S.C. § 841(b)(1)(A)(iii) (2009).

Petitioner now moves the Court to reduce his sentence under the Fair Sentencing Act of 2010.¹ The Fair Sentencing Act of 2010, SB 1789, was signed into law on August 3, 2010, as Public Law 111-220. The Fair Sentencing Act amended 21 U.S.C. § 841(b)(1), in part, by increasing the quantity of cocaine base that would

¹Petitioner mistakenly bases his argument on a supposed retroactive amendment to the Sentencing Guidelines. His argument is more accurately recharacterized as coming under the Fair Sentencing Act. Either way, it lacks merit.

result in a mandatory minimum ten-year sentence from 50 grams to 280 grams and by increasing the quantity that would result in a mandatory minimum sentence of five years from 5 grams of cocaine base to 28 grams of cocaine base. However, because the Fair Sentencing Act contains no express statement that it is retroactive, the general savings statute, 1 U.S.C. § 109, requires that the penalties that were in effect at the time the crime was committed be applied to the sentence. United States v. Brewer, 624 F.3d 900, 909 n. 7 (8th Cir.2010). As a result, the Court does not have the authority to reduce petitioner's sentence, and the petition will be denied.

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED**.

An Order of Dismissal will be filed herewith.

Dated this 26th day of February, 2013.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE