UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CLYDE BAXTER, a.k.a "Chopper", Petitioner, v. UNITED STATES OF AMERICA, Respondent.	Case Nos. 3:07cr010 (SRU) 3:09cv368 (SRU)

RULING ON MOTION FOR RESENTENCING

Clyde Baxter, *pro se*, moves this court, pursuant to 28 U.S.C. § 3582(c)(2), to reconsider his sentence in light of the Fair Sentencing Act of 2010 ("FSA"). A court may upon motion reconsider a sentence when "a sentencing range … [has been] subsequently … lowered by the Sentencing Commission." 28 U.S.C. § 3582(c)(2). According to Baxter, his sentencing exposure has dropped because the FSA both reduced the mandatory minimum for certain drug offenses, and narrowed the sentencing disparity between distribution of crack cocaine and powder cocaine.

Putting aside the question whether the FSA amendments qualify as reductions under section 3582, Baxter's motion fails on the merits. The Second Circuit has held that the FSA cannot be applied retroactively to sentences imposed before Congress enacted the statute. In *United States v. Diaz*, the appeals court explained that FSA did not apply to a defendant who "was convicted and sentenced before the FSA was enacted." 627 F.3d 930, 930 (2d Cir. 2010). Although the Supreme Court has held that the Act applies to offenders who committed crimes before the FSA's effective date, but were sentenced after, the Court has not unsettled *Diaz*'s bright line rule. *See Dorsey v. United States*, 132 S. Ct. 2321 (2012) (holding that FSA reductions apply to defendants whose conduct occurred before passage of the FSA but who were sentenced after the act went into effect).

Baxter was convicted on December 18, 2007, and was sentenced on April 3, 2008—over two years before the passage of the FSA. Because Baxter falls squarely within *Diaz*'s ambit, his motion (doc. # 12) is denied.

It is so ordered.

Dated at Bridgeport, Connecticut, this 20th day of August 2013.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge