UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
v.	)	CRIMINAL ACTION NO. 97-10171-WGY
CARLOS GAGOT	)	
Defendant.	)	

MEMORANDUM AND ORDER

YOUNG, D.J. February 19, 2008

In September of 1997, Carlos Gagot ("Gagot") pled guilty to one count of conspiring to possess with intent to distribute crack cocaine and four counts of distribution of crack cocaine. At a sentencing hearing three months later, this Court, after taking into account the particular circumstances of the case,[1] found that the applicable range under the United States Sentencing Guidelines ("Guidelines") was 168 to 210 months imprisonment. Sentencing Tr. at 10. The Court ultimately sentenced Gagot to 168 months imprisonment followed by a five-year term of supervised release. Id. at 15.

Gagot, having served the bulk of his prison term, is one of many defendants now eligible to benefit from Amendment 706 to the

[1] These included Gagot's criminal history level, a two-level enhancement for his leadership role in the crime, a two-level enhancement for obstruction of justice, and a three-level reduction for acceptance of responsibility. Sentencing Tr. at 4, 10.

Guidelines, which reduced by two the offense level applicable to most crack cocaine crimes. Joint Mem. at 4 (citing U.S. Sentencing Comm'n, Supp. to App. C, Amend. 706). Although generally district courts "may not modify a term of imprisonment once it has been imposed," limited power to do so exists when a defendant is sentenced based on a sentencing range that is later reduced and when that amendment is designated as retroactive by the Sentencing Commission. 18 U.S.C. § 3582(c)(2) (requiring that reduction be "consistent with applicable policy statements issued by the Sentencing Commission"); see also U.S.S.G. § 1B1.10(a) (stating that if a Guidelines amendment is not specifically listed as having retroactive effect in § 1B1.10(c), reducing a defendant's term of imprisonment pursuant to that amendment does not comport with the Commission's policy statements and thus is not authorized by § 3582(c)(2)). The Commission approved the retroactive application of Amendment 706 on December 11, 2007,[2] thus re-opening the courthouse doors to numerous inmates who, like Gagot, were sentenced under a regime marked by an "unconscionable" disparity between the sentences given to crack cocaine and powder cocaine offenders. Paul Butler, When Judges Lie (And When They Should), 91 Minn. L. Rev. 1785, 1825 n. 203 (2007) (quoting associate director of the White

[2] Press Release, U.S. Sentencing Comm'n, U.S. Sentencing Commission Votes Unanimously to Apply Amendment Retroactively for Crack Cocaine Offenses (Dec. 11, 2007), available at http://www.ussc.gov/PRESS/rel121107.htm.

House Office of National Drug Control Policy's views on the 100-to-1 disparity).

Here, the government agrees that Gagot is eligible for a reduction of his sentence under section 3582(c)(2); it also agrees with Gagot that the applicable sentencing range under the Guidelines as amended is 135 to 168 months imprisonment. Joint Mem. [Doc. 95] at 6. Furthermore, the government has joined Gagot in asking that this Court reduce Gagot's sentence to a 135-month term of imprisonment followed by a five-year term of supervised release. Id. Were this sentence to be imposed, Gagot would be eligible for immediate release from incarceration. Id. at 7.

Despite the fact that all parties agree that Gagot's sentence should be reduced, the Court today is without power to modify his term of imprisonment. "The district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 552 (2005) (quoting Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994)). Accordingly, this Court must obey the statutory mandate of 18 U.S.C. § 3582(c)(2), which makes the jurisdiction of district courts to modify criminal sentences in circumstances like these contingent on adherence to the Commission's policies. The Commission has stated its wish that Amendment 706 not be given retroactive effect until March 3, 2008

and has directed that section 1B1.10(c) of the Guidelines Manual not be amended to list Amendment 706 as having retroactive effect until that date. Notice of Final Action Regarding Amendments to Policy Statement § 1B1.10, Effective March 3, 2008, 73 Fed. Reg. 217-01 (Jan. 2, 2008). District courts, therefore, must until March 3 utilize the previous version of the Guidelines Manual, which indicates that applying Amendment 706 retroactively is "not consistent with [the Commission's] policy statement." U.S.S.G. § 1B1.10(a), (c). Accordingly, this Court today lacks jurisdiction to effectuate Gagot's petition.[3]

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[3] Gagot argues that United States v. Booker, 543 U.S. 220 (2005), renders the Guidelines simply advisory as to all aspects of the Sentencing Reform Act, including 18 U.S.C. § 3582(c). As such, Gagot asserts, this Court is not bound by the Commission's temporal restriction on the retroactivity of Amendment 706. Joint Mem. at 10. This Court disagrees. Booker was written with an eye toward preserving the Sixth Amendment rights of defendants, which cannot be abridged by Congressional fiat, not the entirely separate issue of a district court's jurisdiction, which Congress is able to circumscribe as it sees fit.

Furthermore, Gagot's argument, taken to its logical conclusion, would allow each district court to decide on its own which Guidelines amendments apply retroactively. Specifically, the only way in which retroactivity is addressed by section 3582(c)(2) is via the requirement that sentence reductions be "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(2). To comply with this portion of the statute, district courts turn to sections 1B1.10(a) and (c) of the Guidelines Manual to determine whether the Commission has stated that a particular amendment is designed to have retroactive effect. Ruling that the policy statements of the Commission are "advisory only," Joint Mem. at 10, would mean that district courts would no longer be bound by the Commission's decisions about which amendments are retroactive and which are not. This, however, cannot be the case because "Congress has granted the Commission the unusual explicit power to decide whether and to what extent its amendments reducing sentences will

As noted above, were the Court able to modify Gagot's sentence today and impose the sentence recommended by the U.S. Attorney, he could be released from prison tomorrow. The failure of the Commission immediately to implement its solution to the "fundamental unfairness" in the way crack cocaine offenders were treated under the previous version of the guidelines, Press Release, supra note 2, virtually guarantees that some defendants, whether Gagot or someone similarly situated, will spend more time in prison than they should have. As much as the Court might disfavor that prospect, it is an inequity the Court is powerless, under the law, to rectify. Because the Court agrees with the jointly proposed modification of sentence, however, Gagot ought not spend one more day in prison than necessary to effect the goals of 18 U.S.C. § 3553(a) and to comply with the jurisdictional limits set forth in 18 U.S.C. § 3582(c)(2).

Accordingly, Gagot's petition to reduce his sentence is ALLOWED, effective March 3, 2008. An amended judgment sentencing Gagot to 135 months imprisonment but in all other respects remaining unchanged will enter on that day.

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be given retroactive effect." Braxton v. United States, 500 U.S. 344, 348 (1991)(citing 28 U.S.C. § 994 (u).

SO ORDERED.

/s/ William G. Young

WILLIAM G. YOUNG
DISTRICT JUDGE

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