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2014 Decisions

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States Court of Appeals  
for the Third Circuit

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1-14-2014

## USA v. Curtis McKeithan

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**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 13-3563

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UNITED STATES OF AMERICA

v.

CURTIS L. MCKEITHAN,  
Appellant

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On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
(D.C. Criminal Action No. 1-00-cr-00278-001)  
District Judge: Honorable Sylvia H. Rambo

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
December 27, 2013

Before: FUENTES, GREENBERG and VAN ANTWERPEN, Circuit Judges

(Filed: January 14, 2014)

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OPINION

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PER CURIAM

Curtis L. McKeithan, proceeding pro se, appeals from an order of the United States District Court for the Middle District of Pennsylvania. We will affirm the District Court's order.

McKeithan was convicted by a jury in 2001 of drug trafficking and was originally

sentenced to a term of imprisonment of 420 months. After a number of unsuccessful post-conviction motions, McKeithan filed a motion in May 2012 to reduce his sentence pursuant to 28 U.S.C. § 3582(c)(2), referring to the Fair Sentencing Act (“FSA”), and “[t]he retroactive Amendment 706 [that] went into [e]ffect on November 1, 2012 [sic] and listed under [United States Sentencing Guidelines (“U.S.S.G.”)] § 1B1.10, replacing Amendment 706.” The District Court denied relief, noting that the FSA did not apply retroactively, but on appeal, we construed McKeithan’s motion as raising a claim for reduction of sentence under Amendment 750, which does apply retroactively, per U.S.S.G. § 1B1.10(c). We remanded to the District Court to consider the merits of McKeithan’s Amendment 750 argument. See C.A. No. 12-2919.

On remand, the District Court ordered briefing. The Government conceded that McKeithan was eligible for a sentence reduction pursuant to Amendment 750, but opposed McKeithan’s attempts to raise other issues<sup>1</sup> in connection with his sentence. The District Court agreed with the Government’s position. It reduced McKeithan’s sentence to 352 months’ imprisonment, but found that his other sentencing claims were not cognizable in a § 3582(c)(2) proceeding. McKeithan timely appealed.

The District Court properly determined that the scope of its resentencing was limited to any changes that would result from application of the retroactive amendment,

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<sup>1</sup> McKeithan sought to raise claims that: (1) the courts should apply a 1:1 crack-to-powder cocaine ration; (2) there was a problem with the “use prong” of his conviction pursuant to 18 U.S.C. § 924(c); (3) he should not have received a sentencing enhancement for his managerial role as the issue was not submitted to the jury; and (4) his criminal history should be adjusted from level III to level II.

here, Amendment 750. United States v. McBride, 283 F.3d 612, 615-16 (3d Cir. 2002). Section 3582(c)(2) “does not authorize a resentencing, ” but only “permits a sentence reduction within the narrow bounds established by the [United States Sentencing Commission.]” Dillon v. United States, 560 U.S. 817, \_\_\_, 130 S. Ct. 2683, 2694 (2010). Thus, the District Court lacked the authority to address any of McKeithan’s claims that were unaffected by the Commission’s amendment. Id.

For the foregoing reasons, we will affirm the District Court’s judgment.