

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 09-1542

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United States of America,	*	
	*	
Plaintiff - Appellee,	*	Appeal from the United States
	*	District Court for the Eastern
v.	*	District of Missouri.
	*	
James Borders,	*	[UNPUBLISHED]
	*	
Defendant - Appellant.	*	

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Submitted: June 14, 2010  
Filed: June 23, 2010

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Before MURPHY, BEAM, and BENTON, Circuit Judges.

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PER CURIAM.

In 2000, James E. Borders was found guilty of conspiracy to distribute more than 50 grams of crack cocaine. The district court determined a Guidelines sentencing range of life imprisonment and imposed a life sentence. After the Sentencing Commission reduced by two levels the offense level applicable to crack cocaine offenses in Amendments 706 and 711 of the Guidelines, Borders moved for modification of his sentence under 18 U.S.C. § 3582(c)(2). The district court<sup>1</sup> granted

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<sup>1</sup> The Honorable Rodney W. Sippel, United States District Court for the Eastern District of Missouri.

a two-level reduction, reducing the advisory range to 360 months to life imprisonment. The district court re-sentenced Borders to 360 months in prison.

Borders appeals, arguing that the district court erred when it considered the Guidelines mandatory in applying § 3582(c)(2) and the policy statements in U.S.S.G. § 1B1.10. This argument is foreclosed by this court's decision in *United States v. Starks*, 551 F.3d 839 (8th Cir. 2009), cited by *United States v. Dillon*, 572 F.3d 146, 150 (3d Cir. 2009), *aff'd*, No. 09-6338, slip op. at 14 (S. Ct. June 17, 2010). As the Supreme Court held, "proceedings under § 3582(c)(2) do not implicate the Sixth Amendment right to have essential facts found by a jury beyond a reasonable doubt." *Id.* at 11. Therefore, the district court correctly applied 18 U.S.C. § 3582(c) and U.S.S.G. § 1B1.10(b)(2)(A). The judgment of the district court is affirmed.

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