

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 11-3831

United States of America,

Appellee,

v.

Deshaun Randell Lewis,

Appellant.

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Appeal from the United States
District Court for the Southern
District of Iowa.

[UNPUBLISHED]

Submitted: July 31, 2012
Filed: August 3, 2012

Before LOKEN, BOWMAN, and COLLOTON, Circuit Judges.

PER CURIAM.

In 2008, Deshaun Lewis was sentenced to 204 months in prison after he pleaded guilty to a drug-conspiracy offense. See 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846, 851. The district court¹ reduced the then-applicable twenty-year mandatory minimum sentence based upon the government's 18 U.S.C. § 3553(e) motion. Lewis now appeals the court's denial of his 18 U.S.C. § 3582(c)(2) sentence-reduction motion. After careful de novo review, we affirm. See United States v. Baylor, 556 F.3d 672, 673 (8th Cir. 2009).

¹The Honorable John A. Jarvey, United States District Judge for the Southern District of Iowa.

Like the district court, we construe Lewis's motion as seeking relief under Amendment 750 to the Guidelines, which lowered the base offense level for certain cocaine base offenses. However, Lewis's Guidelines range reflected the statutory minimum sentence, which was not lowered by Amendment 750. Therefore, he was not eligible for relief under section 3582(c)(2), even though he was sentenced below the statutory minimum based upon the government's substantial assistance motion. See U.S.S.G. § 1B1.10, comment. (n.1(A)(ii)); Baylor, 556 F.3d at 673; United States v. Jones, 523 F.3d 881, 882 (8th Cir. 2008). Lewis further argues he is entitled to be resentenced under the Fair Sentencing Act of 2010. But that statute does not apply to persons sentenced before its enactment and in any event may not be properly raised in a § 3582(c)(2) motion.

Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw.
