

cocaine base in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A), and Count 3, possession of firearms during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(i). (*See* Doc. 11; Minute Entry February 3, 2009; Doc. 41.) Both crimes carried statutory minimum penalties established by Congress.

The presentence report shows that in the absence of the 120-month statutory minimum, Mr. Brown's guideline calculation on Count 1 would have been 70-87 months based on an offense level of 27 and a Criminal History Category of I. (*See* Doc. 62-1 at ¶¶ 51.) Because the statutory mandatory minimum was greater, 120 months became the guideline sentence recommendation for Count 1. (*Id.*; *see* U.S.S.G. § 5G1.1(b).) The guideline on Count 3 was 60 months consecutive, the minimum required by statute. (Doc. 62-1 at ¶¶ 50, 51.)

The sentencing court departed downward as a result of substantial assistance pursuant to 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1. (Doc. 21; *see* Doc. 42 at 16.) The court sentenced Mr. Brown to 72 months on Count 1 and 36 months on Count 3, to run consecutively. (Doc. 35; *see* Doc. 42 at 16-17; Minute Entry March 4, 2010.) The Fourth Circuit affirmed his conviction on appeal, (Docs. 43-44), and a § 2255 motion was unsuccessful. (Doc. 59.) Mr. Brown filed the pending motion for a sentence reduction on November 6, 2014. (Doc. 60.)

ANALYSIS

The present motion asks this Court to reduce Mr. Brown's sentence pursuant to 18 U.S.C. § 3582(c)(2) on the basis of Amendments 750, 780, 782, and 788 to the United States Sentencing Guidelines applicable to cocaine base offenses. Section 3582(c)(2)

provides that “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission,” the sentencing court may reduce the term of imprisonment “if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2). This Court agrees with both parties that these amendments have the effect of lowering Mr. Brown’s guideline calculations absent the statutory mandatory minimum. However, the issue here is whether Mr. Brown’s original sentence was “based on” on a subsequently lowered sentencing range as required by 18 U.S.C. § 3582(c)(2).

The Fourth Circuit addressed a similar sentence reduction request in *United States v. Hood*, 556 F.3d 226 (4th Cir. 2009). In *Hood*, the court held that § 3582(c)(2) does not authorize a reduction in sentence where the defendant was initially subject to a statutory minimum term of imprisonment that trumped an otherwise applicable Guidelines range. *Hood*, 556 F.3d at 232-33. This is so because the sentence was “based on” the statutory minimum, not the Guidelines, and it remains the rule even when the sentencing court was authorized by statute to go below the minimum sentence due to the defendants’ substantial assistance to the government. *Id.* at 233-34; *see also* 18 U.S.C. § 3553(e).

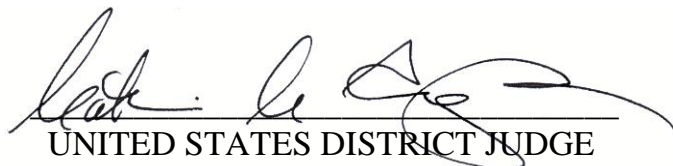
Hood has been repeatedly applied in this circuit. *E.g.*, *United States v. Spinks*, 770 F.3d 285, 287-88 (4th Cir. 2014) (holding that the only appropriate factor to consider in connection with a § 3553(e) departure from a mandatory minimum is substantial assistance); *United States v. Black*, 737 F.3d 280, 286-87 (4th Cir. 2013) (holding that a defendant subject to a statutory minimum is not eligible for a reduced sentence under §

3582(c)(2) because his sentence was not based on a sentencing range that the Sentencing Commission subsequently lowered).

In light of the language of the statute and the holdings in *Hood, Black, and Spinks*, this Court concludes that Mr. Brown was not “sentenced to a term of imprisonment *based on a sentencing range that has subsequently been lowered* by the Sentencing Commission” 18 U.S.C. 3582(c)(2) (emphasis added). Mr. Brown’s sentence was “based on” the mandatory minimum sentence in place at the time of sentencing and “based on” a departure from that mandatory minimum pursuant to 18 U.S.C. § 3553(e). Therefore, the Court finds that it need not consider the application of the Sentencing Guideline Amendments because the statutory prerequisites have not been met. *E.g., Dorsey v. United States*, 132 S. Ct. 2321, 2327 (2012) (recognizing that no guideline provision can trump applicable statutory sentencing requirements). This Court has no authority to reduce Mr. Brown’s sentence. *See United States v. Williams*, 1:07cr429-6 (M.D.N.C. July 10, 2015) (Doc. 372).

It is **ORDERED** that the motion for sentence reduction, (Doc. 60), is **DENIED**. Because the Government and the defendant agree that the Court does have statutory authority to reduce the sentence, the Court issues a certificate of appealability.

This the 17th day of August, 2015.


UNITED STATES DISTRICT JUDGE