

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 20, 2012

No. 11-50110
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GREGORY EUGENE NEAL,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:10-CR-511-1

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before KING, JOLLY, and GRAVES, Circuit Judges.

PER CURIAM:*

The Supreme Court has vacated our judgment affirming Defendant-Appellant Gregory Eugene Neal's sentence, and remanded this matter for further consideration in light of *Dorsey v. United States*, 132 S. Ct. 2321 (2012). *United States v. Neal*, 464 F. App'x 244 (5th Cir. 2012) (unpublished), *vacated*, No. 11-10442, 2012 WL 1855916 (U.S. Oct. 1, 2012) (mem.). We affirmed, in part,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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because circuit precedent required us to reject Neal's argument that the sixty-month mandatory minimum sentence under 21 U.S.C. § 841(b)(1)(B) did not apply pursuant to the Fair Sentencing Act of 2010. *See United States v. Tickle*, 661 F.3d 212 (5th Cir. 2011), *vacated*, No. 11-8023, 2012 WL 2470084 (U.S. June 29, 2012). Because *Dorsey* abrogated this precedent, that part of our judgment is no longer valid. We held in the alternative, however, that regardless of the mandatory minimum sentence, Neal's sixty-month sentence was reasonable and based on the factors set out in 18 U.S.C. § 3553(a). *Neal*, 464 F. App'x at 246. Because *Dorsey* does not affect our alternative holding, we AFFIRM on that basis.

AFFIRMED; MOTION FOR REMAND DENIED.