

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

United States Court of Appeals
Fifth Circuit

FILED

October 26, 2010

Lyle W. Cayce
Clerk

No. 08-30574
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KIN L. GAYLE,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:07-CR-196-1

Before SMITH, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Kin L. Gayle, federal prisoner # 30212-034, pleaded guilty to possession with intent to distribute five grams or more of crack cocaine, and he was sentenced to the mandatory minimum of 120 months in prison. Gayle appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for a reduction of sentence, which primarily was based on recent amendments to the Sentencing Guidelines for crack cocaine. The Assistant Federal Public Defender representing Gayle on appeal has filed an unopposed motion to substitute

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 08-30574

counsel. Counsel avers that he was a member of the review panel charged with determining Gayle's eligibility for a reduction under the amendments to the Guidelines for crack cocaine. Counsel contends that his participation in the review panel creates a potential conflict of interest.

Because Gayle was subjected to the mandatory minimum penalty, he was not eligible for § 3582(c)(2) relief under the recent crack cocaine guidelines amendments. *See* 21 U.S.C. §§ 841(b)(1)(A), 851; *United States v. Pardue*, 36 F.3d 429, 431 (5th Cir. 1994). Nor has Gayle alleged or identified any basis upon which the district court could have imposed a sentence below the statutory minimum.

Gayle's appeal is entirely without merit. Therefore, counsel's motion to substitute counsel is denied, the appeal is dismissed, and counsel is excused from further responsibilities herein. *See* 5TH CIR. R. 42.2.

MOTION TO SUBSTITUTE COUNSEL DENIED; APPEAL DISMISSED.