

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

United States Court of Appeals
Fifth Circuit

FILED

April 17, 2012

Lyle W. Cayce
Clerk

No. 10-61008
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SAMUEL PAUL PETTIS,

Defendant-Appellant

Cons. w/ No. 10-61009

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LARRY SHOUMAKER,

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Mississippi
USDC No. 2:09-CR-156-1
USDC No. 1:10-CR-7-1

No. 10-61008
c/w No. 10-61009

Before JONES, Chief Judge, and JOLLY and SMITH, Circuit Judges.

PER CURIAM:*

In these consolidated appeals, Samuel Paul Pettis and Larry Shoumaker appeal the sentences imposed following their convictions for possession with intent to distribute cocaine base. They argue that the district court erred in failing to retroactively apply the Fair Sentencing Act of 2010, thereby adversely affecting the mandatory minimum sentences to which they were exposed.

This argument is foreclosed by *United States v. Tickle*, 661 F.3d 212, 215 (5th Cir. 2011), *petitions for cert. filed* (Dec. 15, 2011) (No. 11-8023) *and* (Dec. 27, 2011) (No. 11-8268), which held “that the penalties prescribed by the FSA do not apply to federal criminal sentencing for illegal conduct that preceded the FSA’s enactment.” Although the Supreme Court has recently granted certiorari in two Seventh Circuit cases that held that the FSA does not apply retroactively, our precedent is nevertheless binding. *See United States v. Lopez-Velasquez*, 526 F.3d 804, 808 n.1 (5th Cir. 2008).

AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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