

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted October 20, 2011*

Decided October 21, 2011

Before

JOHN L. COFFEY, *Circuit Judge*

JOEL M. FLAUM, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

No. 10-3958

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

TIMOTHY MOSES,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

No. 9 CR 886

Virginia M. Kendall,
Judge.

ORDER

Timothy Moses pleaded guilty to distributing crack cocaine, 21 U.S.C. § 841(a)(1). The crime was committed in June 2009 and involved 56 grams of crack, and under the version of § 841 then in force, Moses faced a prison term of at least 10 years. *See id.* § 841(b)(1)(A) (2006 & Supp. II 2008). That is the sentence imposed by the district court, and Moses brings this appeal to preserve his argument that the court should have applied the lower minimum set out in the Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2(b)(1), 124

* After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* FED. R. APP. P. 34(a)(2).

Stat. 2372, 2372. If Moses had committed his crime after that legislation was enacted on August 3, 2010, he would have been subject to a minimum prison term of 5 years instead of 10. Compare 21 U.S.C. § 841(b)(1)(A) (2006 & Supp. IV 2010) with *id.* § 841(b)(1)(A) (2006 & Supp. II 2008). As Moses concedes, however, we have concluded that the Fair Sentencing Act does not apply if the offense conduct occurred before the statute's enactment, even for defendants sentenced after that date. *United States v. Fisher*, 635 F.3d 336, 340 (7th Cir. 2011); see *United States v. Campbell*, No. 10-3002, 2011 WL 4436001, at *1 (7th Cir. September 26, 2011); *United States v. Holcomb*, No. 11-1558, 2011 WL 3795170 (7th Cir. August 24, 2011). Accordingly, the district court properly sentenced Moses under the prior version of § 841(a)(1).

AFFIRMED.