

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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|--------------------------|---|----------------------------|
| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | Case No. 3:06cr00268 (PCD) |
| | : | |
| BENIGNO MALAVE | : | |

**ORDER ON MOTION FOR RETROACTIVE APPLICATION OF SENTENCING
GUIDELINES**

The Defendant, Benigno Malave, moves for Retroactive Application of Sentencing Guidelines to Crack Cocaine Offense in accordance with 18 USC § 3582 [Doc. No. 1433] and for Hearing on this Motion [Doc. No. 1434]. For the reasons stated herein, Defendant's motions are **denied**.

Defendant moves for a reduction of sentence pursuant to 18 USC § 3582(c)(2) and seeks the benefit of the currently pending Fairness in Cocaine Sentencing Act, applying a 1 to 1 crack cocaine and powder cocaine guidelines ratio. However, following an appeal, Defendant was resentenced on April 25, 2008. At resentencing Defendant's term of imprisonment was reduced from 144 to 120 months and the November 1, 2007 guideline amendments were considered. Therefore, he was not "sentenced based on a sentencing range that has subsequently been lowered" and 18 USC § 3582(c)(2) affords no further relief. Furthermore, as the Fairness in Cocaine Sentencing Act has not been passed by Congress, it provides no basis for the relief Defendant seeks.

SO ORDERED.

Dated at New Haven, Connecticut, March 5, 2010.

/s/ _____
Peter C. Dorsey, U.S. District Judge

United States District Court