



## In Dillon, Court Limits Application of Key Sentencing Ruling

June 18, 2010

On June 17, 2010, the U.S. Supreme Court issued an 8–1 ruling in *Dillon v. United States* (with only Justice Stevens dissenting) that the Court’s 2005 ruling in *United States v. Booker* that made the U.S. Sentencing Guidelines advisory rather than mandatory does not apply to proceedings to reduce a sentence under section 3582(c)(2) of the U.S. Code.

Percy Dillon, who had been convicted of crack and powder cocaine offenses, received the benefit of an amendment to the crack cocaine guidelines that the Sentencing Commission ruled should be applied retroactively to reduce the sentences of those who had already been convicted of crack offenses. In his *pro se* motion, Dillon asked not only for the two–level reduction specifically authorized by the Commission but also for a further reduction that he said was authorized under *Booker*, which made the guidelines advisory.

Both the District Court and the Third Circuit rejected Dillon’s argument, and the Supreme Court agreed with them. It held that sentence–reduction proceedings like Dillon’s, which in the statutory language involve a “modification of a term of imprisonment,” were not covered by *Booker* and that the lower court was therefore not authorized to reduce Dillon’s sentence below the Guidelines range. The Court noted that retroactive sentence–modification proceedings like Dillon’s are not constitutionally compelled but merely represent a “congressional act of lenity intended to give prisoners the benefit of later



enacted adjustments.” Thus, the Sixth Amendment rights at the heart of *Booker* are not implicated.

This narrow ruling, applicable only to a limited number of proceedings, does not in any way vitiate or destroy the *Booker* holding. Certainly, defense attorneys who were hoping to obtain shorter terms for their clients in a few sentence–reduction proceedings will be disappointed, but I don’t see this in any way as a retreat from the constitutional principles at the heart of *Booker*.

*Crime in the Suites* is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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