

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 12a0656n.06

No. 10-2606

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED
Jun 21, 2012
LEONARD GREEN, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.) ON APPEAL FROM THE
) UNITED STATES DISTRICT
) COURT FOR THE WESTERN
SAMUEL DARNELL FRANCE,) DISTRICT OF MICHIGAN
)
)
Defendant-Appellant.)
)

BEFORE: COOK and STRANCH, Circuit Judges; STAMP, District Judge.*

PER CURIAM. Samuel Darnell France, a federal prisoner, appeals the sentence imposed on remand from this court. France entered a guilty plea in 2008 to a charge of distribution of fifty or more grams of cocaine base. He was classified as a career offender. After receiving a downward departure for substantial assistance, he was sentenced to 200 months' imprisonment.

On appeal, we vacated France's sentence and remanded for further development of whether one of his prior convictions was a violent felony for purposes of the career-offender determination. On remand, the government could not establish that the prior conviction was a violent felony. France was therefore resentenced, after again receiving credit for substantial assistance, to a term of 73 months' imprisonment.

*The Honorable Frederick P. Stamp, Jr., Senior District Judge for the Northern District of West Virginia, sitting by designation.

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United States v. France

Now, on appeal from his new sentence, France argues that the district court should have applied the Fair Sentencing Act, because his resentencing occurred after the effective date of that Act. Although the government contested this issue in the district court, it has changed its position and now agrees with France that he should be sentenced under the Fair Sentencing Act. Accordingly, we vacate France's sentence and remand for resentencing. *See United States v. Jones*, 443 F. App'x 994, 995 (6th Cir. 2011).