

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 08-3532

United States of America,

Appellant,

v.

Sammy Welch,

Appellee.

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Appeal from the United States
District Court for the
Eastern District of Missouri.

[UNPUBLISHED]

Submitted: October 19, 2009

Filed: October 26, 2009

Before WOLLMAN, MURPHY, and BYE, Circuit Judges.

PER CURIAM.

The government appeals the district court's order granting Sammy Welch's motion for a reduction in his sentence based on a guidelines amendment (Amendment 706) which reduced the advisory base offense level by two levels for certain cocaine base (crack) offenses. The government argues Welch was not eligible for a reduction because he was subject to a statutory mandatory minimum term of 120 months when originally sentenced, despite the fact that he received a lower sentence of 100 months due to the government's motion to depart downward from the mandatory minimum for substantial assistance under 18 U.S.C. § 3553(e).

The government's argument is well-taken. See United States v. Byers, 561 F.3d 825, 831 (8th Cir. 2009) (concluding defendants who were subject to statutory mandatory minimum terms when originally sentenced were not eligible for sentence reductions based on Amendment 706 even though their original sentences were below the mandatory minimum because of a § 3553(e) substantial assistance departure motion); see also United States v. Baylor, 556 F.3d 672, 673 (8th Cir. 2009) (concluding the same and noting "[t]he fact that the government originally moved to depart downwards from the mandatory minimum did not impact [the defendant's] Guidelines range and thus is irrelevant.").

We therefore reverse and remand to the district court with instructions to reinstate Welch's original sentence of 100 months imprisonment.
