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Sixth Circuit Crack Cocaine Sentencing Decision Also Relevant to Civil Practitioners

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In a highly anticipated *en banc* decision in *United States of America v. Blewett*, the United States Court of Appeals for the Sixth Circuit addressed whether prisoners previously sentenced for possession of crack cocaine were entitled to have their sentences retroactively reduced under the **Fair Sentencing Act of 2010**. In a 10-7 decision, which involved seven separate opinions by the Sixth Circuit, the court concluded that the Fair Sentencing Act did not retroactively reduce the mandatory minimum sentences that were required for defendants at the time of their sentencing.

In addition to being newsworthy, the Sixth Circuit's opinion is notable even to civil practitioners because it gives insight on the approach to statutory interpretation the majority of the Sixth Circuit took in this case. The central holding of *Blewett* is that even though, as a matter of public policy, it may not make sense to give defendants convicted for possession of crack cocaine in the future shorter sentences than defendants previously sentenced for possession of the exact same amount of crack cocaine, it is up to Congress, not the court, to make that determination:

> At the end of the day, this is a case about who, not what—about who has authority to lower the Blewetts' sentences, not what should be done with that authority. In holding that the courts lack authority to give the Blewetts a sentence reduction, we do not mean to discount the policy arguments for granting that reduction. Although the various opinions in this case draw different conclusions about the law, they all agree that Congress should think seriously about making the new minimums retroactive. Indeed, the Fair Sentencing Act, prospective though it is, dignifies much of what the Blewetts are saying as a matter of legislative reform and may well be a powerful ground for seeking relief from Congress. Yet the language of the relevant statutes (the Fair Sentencing Act, § 109 and § 3582(c)(2)) and the language of the relevant decisions (*Dorsey*, *Davis* and *Harmelin*) leave us no room to grant that relief here. Any request for a sentence reduction must be addressed to a higher tribunal (the Supreme Court) or to a different forum altogether (the Congress and the President).

Op. at 20.

Blewett is likely to be cited by many civil practitioners in the Sixth Circuit in cases where a party seeks to apply the plain meaning of statutory language, particularly where applying the plain language leads to a result that might be considered contrary to public policy.

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