

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JASON DAVID HART,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civ. Action No. 05-1463 (CKK)

Crim. Action No. 01-198

**FILED**

**JUN - 2 2008**

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

**MEMORANDUM OPINION**

(June 2, 2008)

Currently before the Court is Petitioner Jason David Hart's [37] Motion to Reconsider the Court's January 18, 2006 Order granting the Government's Motion to Dismiss his habeas petition brought under 28 U.S.C. § 2255. Petitioner argues that the Court should not have dismissed his habeas petition—and that his sentence was improper—because the Supreme Court made the Federal Sentencing Guidelines advisory in *United States v. Booker*, 543 U.S. 220 (2005). Petitioner was sentenced on January 23, 2002, whereas *Booker* was not decided by the Supreme Court until January 12, 2005. The D.C. Circuit has held that *Booker* may not be applied retroactively. See *In re Fashina*, 486 F.3d 1300, 1306 (D.C. Cir. 2007) (“[w]e . . . conclude, as have all our sister circuits, [that] *Booker* does not meet the criteria for retroactive application”); *In re Zambrano*, 433 F.3d 886, 889 (D.C. Cir. 2006) (“we conclude that *Booker* is not a new rule of constitutional law ‘made retroactive to cases on collateral review by the Supreme Court’”) (quoting 28 U.S.C. § 2255). Accordingly, the Court shall deny Petitioner's [37] Motion for Reconsideration. An appropriate order accompanies this memorandum opinion.

/s/

COLLEEN KOLLAR-KOTELLY  
United States District Judge

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