

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

TERRY SCHAFFNER,

Defendant.

ORDER

00-cr-6-bbc

Defendant Terry Schaffner has asked for resentencing pursuant to 18 U.S.C. § 3582, contending that sentencing guideline amendment #709 supports his request. Defendant is wrong; not only does amendment #709 have nothing to do with his sentence but it has no retroactive effect upon sentences that, like defendant's, became final well before its enactment.

Amendment #709 addresses the often complex question of determining when prior sentences are considered "related" in computing a defendant's criminal history score under the Sentencing Guidelines, USSG §§ 4A1.1(f), 4A1.2(a) and 4A1.2(c)(1). A review of defendant's presentence investigation report shows that he had no prior crimes that fell into this category. Thus, any changes in the guidelines would not affect his sentence, even if the

guideline amendment were one that was given retroactive effect by the Sentencing Commission.

Guidelines are considered to have retroactive effect only when they are listed in USSG § 1B1.10(c); Amendment #709 is not listed in that section. According to the Court of Appeals for the Seventh Circuit, that is the end of the matter. E.g., Ebbole v. United States, 8 F.3d 530, 539 (7th Cir. 1993) (amendments to guidelines are not to be applied retroactively unless they are listed in USSG § 1B1.10).

ORDER

IT IS ORDERED that defendant Terry Schaffner's motion for resentencing pursuant to 18 U.S.C. § 3582 is DENIED.

Entered this 9th day of May, 2008.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge