

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL A. WINFIELD,

Defendant.

ORDER

01-cr-9-bbc

Defendant Paul A. Winfield has moved pursuant to 18 U.S.C. § 3582 and U.S.S.G. Amendment 706 for a reduction in the sentence imposed on him on September 14, 2001 and amended on October 11, 2002. The motion must be denied because Amendment 706 does not reduce the offense level for crimes involving 4.5 kilograms or more of cocaine base.

When defendant was sentenced, I found that he had conspired with others to distribute more than 30 kilograms of cocaine base in the Madison area. The attribution of 30 kilograms to defendant and his conspiracy was a conservative estimate; the facts do not support a finding that defendant was responsible for less than 4.5 kilograms. Moreover, defendant was not a low-level player in the conspiracy but a mid-level distributor who provided a steady supply of cocaine base to the street dealers.

Defendant has also asked the court to strike two misdemeanor offenses involving marijuana possession from his criminal history, but it is too late to make such a change. Even if it were not, defendant cannot show that it was error to include the misdemeanors in his criminal history score. Defendant says that he has been told that his misdemeanors should not have been counted because he did not serve at least a year's confinement time and six months of supervision, but his information is incorrect. Felonies carry penalties of more than a year in prison; misdemeanors carry penalties of a year or less. The sentencing guidelines make all sentences for misdemeanors and petty offenses "countable" in determining criminal history scores, with certain exceptions set out in U.S.S.G. § 4A1.2(c)(1) and (2). For example, careless or reckless driving is counted *only* if the sentence was a term of probation of more than one year or a term of imprisonment of at least thirty days. U.S.S.G. § 4A1.2(c)(1). Other offenses such as fish and game violations are not counted at all. U.S.S.G. § 4A1.2(c)((2). Neither subsection (1) nor (2) includes misdemeanor offenses involving drug possession. Therefore, it was proper to count defendant's adult convictions of such misdemeanors, neither of which was more than ten years old. U.S.S.G. § 4A1.2(e)(2) (non-felony convictions imposed within ten years of defendant's commencement of instant offense are counted).

ORDER

IT IS ORDERED that defendant Paul A. Winfield's motion for a reduction in his sentence pursuant to 18 U.S.C. § 3582 is DENIED.

Entered this 23d day of September, 2008.

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