

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ERNEST BROOKS, III,

Defendant.  
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ORDER

02-cr-27-bbc

Defendant Ernest Brooks, III, has filed a motion under 18 U.S.C. § 3582, seeking a modification of his sentence based upon the retroactive sentencing guidelines amendment for cocaine base (crack cocaine). This is defendant's third motion to amend his sentence. Defendant filed his first § 3582 motion on July 17, 2008. Dkt. #247. That motion was denied on February 17, 2009, because the amendment did not change his applicable sentencing range and therefore he was not eligible for a reduction. Dkt. #249. Defendant appealed and the court of appeals dismissed the appeal on April 22, 2009.

On October 16, 2009, defendant filed another motion under 18 U.S.C. § 3582, which was construed as a motion for reconsideration of the February 17, 2009 order. Dkt. #253. That motion was denied on October 21, 2009, because the court of appeals had already

affirmed the February order and this court had no authority to reconsider the matter.

Now defendant has filed a third motion for a sentence reduction under the second round of amendments to the sentencing guidelines for crack cocaine. Dkt. #255. In addition to seeking a reduction under the amendment to the guidelines, defendant also requests a reduction based upon the rehabilitative efforts he has made in prison. Unfortunately for defendant, I cannot grant him a reduction in his sentence on either ground. The new amendments have no effect on his guidelines. He was held responsible at sentencing for 11.85 kilograms of crack cocaine, plus 28.4 kilograms of powder cocaine. His base offense level would still be 38.

Although defendant's efforts at rehabilitation are commendable, they are not a sufficient ground for reduction of his sentence. Congress does not allow a sentencing court to reduce a sentence after it has been imposed except under the circumstances set out in 18 U.S.C. § 3582, none of which include rehabilitative efforts. A court may reduce a sentence only if the United States Government has moved for a reduction of defendant's sentence in recognition of substantial assistance that the defendant has provided; the court of appeals has reversed the defendant's conviction or sentence; the Director of the Bureau of Prisons has asked the court for a reduction of defendant's sentence under § 3582(c)(1)(A), or the sentencing range set by the United States Sentencing Commission for defendant's crime has been lowered. Accordingly, defendant's third motion for amendment of his sentencing

guidelines must be denied.

ORDER

IT IS ORDERED that defendant Ernest E. Brooks, III's motion for a sentence reduction pursuant to 18 U.S.C. § 3582, dkt. #255, is DENIED.

Entered this 27th day of November, 2012.

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