

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT MUSTACHE,

Defendant.

ORDER

04-cr-121-bbc

Defendant Robert Mustache has filed a motion pursuant to 18 U.S.C. § 3582, seeking a reduction of the sentence imposed upon him on December 8, 2004 by the Honorable John C. Shabaz. In Judge Shabaz's absence for medical leave, I am handling his cases, including this one.

At sentencing, defendant's total adjusted offense level was 29 and his criminal history category was III. He was sentenced to a term of 165 months, which was in the high midrange of the sentencing guideline range of 140 to 175 months. Under the amended guidelines, his base offense level is 30, less three levels for acceptance of responsibility. With an offense level of 27 and a criminal history category of III, defendant has an advisory guideline range of 120 to 150 months.

Defendant asks for a sentence of 120 months, at the bottom of the amended sentencing range. The government argues for a proportional decrease to between the middle and the top of the amended range, or 141 months.

Defendant qualifies for the two-level reduction in his range. The amount of drugs for which he was held responsible is in the high-middle of the applicable drug quantity range, which is a reason to give him a sentence near the same point of the guideline sentencing range, particularly in light of his length criminal history, which includes battery and assault, and his lack of any serious employment history. I am not persuaded that any sentence below the middle of the guidelines range would be sufficient to protect the community, provide defendant the opportunity for participation in rehabilitative programs and achieve parity with the sentences of similarly situated defendants.

Defendant has not asked for a sentence below the guideline range and I am not inclined to give him one under whatever authority I have under Kimbrough v. United States, 128 S. Ct. 558 (2007).

ORDER

IT IS ORDERED that the judgment and commitment order signed on December 8, 2004 is AMENDED to provide that the sentence imposed on defendant Robert Mustache is reduced to 135 months. In all other respects, the judgment and commitment order

remains as signed on December 8, 2004.

Entered this 5th day of January, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge