

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFERY McREYNOLDS,

Defendant.

OPINION AND ORDER

05-cr-22-bbc

Defendant Jeffery McReynolds has filed a motion for reconsideration of the March 6, 2012 denial of his motion for modification of his sentence under 18 U.S.C. § 3582(c)(2). The motion must be denied because it is untimely.

A defendant filing a motion for reconsideration of a denial of a motion filed under § 3582 must file within the time allowed under Fed. R. App. 4(b) for filing an appeal for denial of a motion in a criminal case, that is, within 14 days. United States v. Redd, 630 F.3d 649, 650 (7th Cir. 2011). Defendant filed his motion for reconsideration on November 8, 2013, more than a year after his original motion for modification had been decided. “Only a motion filed within the time for appeal acts as a genuine request for reconsideration.” Id. His motion might be considered a successive motion, but nothing in the text of § 3582(c) or the language of the applicable amendment, Amendment 712, “suggests that prisoners are given more than one opportunity to request a lower sentence for

any given change in the Guideline range.” Id. at 651.

A close look at defendant’s motion shows that although he calls it one for reconsideration of the denial of his § 3582 motion, he is not asking for a reduction of his sentence under § 3582; he is seeking a review of the amount of base cocaine for which he was held responsible at sentencing. He says that he was indicted for possession of 50 grams but sentenced for the possession of between 50 grams and 1.5 kilograms. He argues that he would be eligible for a second amendment of his sentence if the court had not relied on its own calculation of the cocaine base for which he was held responsible, but had submitted the question to the jury, as Alleyne v. United States, 133 S. Ct. 2151 (2013), requires. This may be true, but it does not change the fact that his sentence cannot be reduced under § 3582, at least not at this time.

Alleyne has not been held to have retroactive effect, Simpson v. United States, 721 F.3d 875 (2013). It is unlikely that it will be, because it is an extension of Apprendi v. New Jersey, 530 U.S. 466 (2000), and the Court has not held that Apprendi has retroactive effect. Unless and until Alleyne is held to apply retroactively to cases decided before it was decided, defendant cannot benefit from the holding. (In any event, the point may be moot because defendant did not go to trial but entered a plea of guilty.)

In summary, defendant’s motion is both untimely and unsupported by the law.

ORDER

IT IS ORDERED that defendant Jeffery McReynolds’s motion for reconsideration

of his last motion filed under 18 U.S.C. § 3582, dkt. #127, is DENIED as untimely.

Entered this 18th day of November, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge