

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JARVIS McKEE,

Defendant.

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ORDER

06-cr-138-bbc

Defendant Jarvis McKee has filed a motion pursuant to 18 U.S.C. § 3582, seeking a reduction of the amended sentence imposed upon him on December 21, 2006.

Defendant's original total adjusted offense level was 23; he was sentenced to 105 months, which was at the top of the sentencing guideline range of 84 to 105 months. Under the amended guidelines, his base offense level is 24, reduced by three levels for acceptance of responsibility. With a total offense level of 21 and a criminal history category of V, defendant has an advisory guideline range of 70 to 87 months.

Defendant asks for a sentence of 70 months, at the bottom of the amended sentencing range. The government argues for a proportional decrease to the top of the amended range, or 87 months.

At the time defendant was sentenced, I noted the factors that led to his being sentenced at the top of the guidelines: his attempt to have his girl friend take responsibility for a rifle found in her home, although it belonged to him; his possession of ecstasy in jail; and his history of noncompliance with probation conditions. I continue to believe that these factors suggest a high likelihood of recidivism. However, recognizing the discrepancy between the crack and powder cocaine guidelines, I will sentence defendant at the middle of his new guideline range, or 78 months. This reduced sentence will still carry out the statutory purposes of sentencing, which include reflecting the severity of defendant's crime, protecting the community and achieving 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 amended judgment and commitment order entered on December 22, 2006, is AMENDED to provide that the sentence imposed on defendant Jarvis McKee is reduced to 78 months. In all other respects, the judgment and commitment

order remains as entered on December 22, 2006.

Entered this 5th day of June, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge