

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

RODNEY SYKES,

Defendant.

ORDER

07-cr-101-bbc

Defendant Rodney Sykes has moved under 18 U.S.C. § 3582 for a reduction in the sentence imposed on him on November 21, 2007, and amended on March 11, 2009. The motion will be denied because defendant does not qualify for another reduction.

On November 21, 2007, defendant pleaded guilty to one count of possessing cocaine base (crack cocaine) with intent to distribute it, in violation of 21 U.S.C. § 846. He was sentenced to a term of imprisonment of 250 months. At the time of his original sentencing, he received the benefit of the retroactive guideline amendment for crack cocaine that took effect on November 1, 2007.

On November 14, 2008, the Seventh Circuit Court of Appeals for the Seventh Circuit vacated the judgment and remanded the defendant's case for resentencing in light of the Supreme Court's decision in Kimbrough v. United States, 128 S. Ct. 558 (2007), which allowed sentencing courts to take into consideration the disparities in guideline sentences

for crack and powder cocaine. On March 11, 2009, defendant was resentenced to a 150-month term of imprisonment.

At this time no statutory provision or court decision makes the Fair Sentencing Act apply retroactively to defendant. In Dorsey v. United States, 132 S. Ct. 2321 (2012), the Supreme Court held that the more lenient penalties of the Fair Sentencing Act applied to those offenders whose crimes preceded the effective date of the act, but who were sentenced after that date. Defendant's crime and sentencing preceded the Act, so the more lenient statutory penalties do not apply to him.

Moreover, even if the Fair Sentencing Act applied to defendant, his guideline imprisonment range would have been 151 to 188 months, which is higher than the 150 months he received at his March 11, 2009 sentencing.

ORDER

Defendant Rodney Sykes's motion for a reduction of sentence under 18 U.S.C. § 3582 is DENIED.

Entered this 11th day of December, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge