

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHNNY ESPINOZA,

Defendant.

ORDER

12-cr-104-bbc

Defendant Johnny Espinoza has moved for a modification of his sentence under 18 U.S.C. § 3582. His motion will be denied because he does not qualify for a two-level reduction in his sentence under the recent guideline amendment.

When defendant was sentenced, he had a total offense level of 28 and a criminal history category of I. His guidelines range was 78-97 months. At sentencing, defendant received a variance, which resulted in a sentence of 60 months.

Because defendant's sentence involved a variance and was not based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), defendant's motion for a modification of his sentence must be denied.

ORDER

IT IS ORDERED that defendant Johnny Espinoza's motion for a reduction in his

sentence under 18 U.S. C. § 3852(c)(2), dkt. #105, is DENIED.

Entered this 9th day of November, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge