IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

LEONARD BUNCH,

Defendant.

ORDER

95-CR-0090-C-01

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Defendant Leonard Bunch has moved for reconsideration of the court's order entered on December 13, 2005, in which I denied his request for a reduction of the sentence imposed on him in 1996. (Although the motion was not received in the court until January17, 2006, defendant's cover letter says that he was placing it into the mail on December 21, 2005. If this is true, as I assume it is, the motion would have been timely under Fed. R. Civ. P. 59(e).)

Defendant's motion must be denied. As I told defendant in the December 13 order, this court has no authority to reduce his sentence.

In the letter that I construed as a motion for reduction of sentence, defendant argued that his sentence should be lowered because of a change in the Sentencing Guidelines. The

change to which defendant referred is a change in Amendment 566, deleting one phrase from U.S.S.G. § 3C1.1 and inserting in its place the following phrase: "the court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice." Defendant alleged that at his sentencing the court never made a finding that he acted willfully rather than inadvertently when he gave material false information to the probation officer during his presentence interview and when he testified at trial. Defendant argued that this omission in 1996 required a reduction in his sentence at this time.

Defendant's argument rests on a faulty premise that every change in a sentencing guideline that is favorable to a defendant authorizes the sentencing court to reduce a sentence that relied on that guideline. In fact, the only changes that require resentencing are those in which the Sentencing Commission determines that a guideline range should be lowered and that the change should be retroactive. United States v. Jones, 55 F.3d 289, 296 (7th Cir. 1955) ("A court can resentence a defendant under amendments that reduce a guideline sentence that the Sentencing Commission has designated to apply retroactively. 18 U.S.C. § 3582(c); 28 U.S.C. § 924(u).") In amending U.S.S.G. § 3c1.1, the Sentencing Commission merely added an admonition to sentencing judges that they take into consideration the possibility that not all inaccurate statements are attempts to obstruct

justice. The commission said nothing about the retroactivity of the amendment and it did not reduce any guideline range. Therefore, § 3582(c) does not provide this court any authority to reduce defendant's sentence.

Even if Amendment 566 had been in effect at the time of defendant's sentencing, it would not have affected my determination that defendant had obstructed justice. Defendant's testimony at trial and his statements to the probation officer were not inadvertent. He may have believed that the belt and padlock device that he had put together was nothing but a means of "fishing," that is, of sending prohibited items out from under his cell door to other inmates, but the jury found that the device was a weapon. He cannot say that this "fishing" defense that he adopted was the result of confusion or faulty memory. His statements and testimony about the supposed purpose of the device were not credible but they were quite clear.

ORDER

IT IS ORDERED that defendant Leonard Bunch's motion for reconsideration of the

December 13, 2005 order denying his motion for reduction of sentence is DENIED.

Entered this 10th day of February, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge