

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT FLEMISTER,

Defendant.

MEMORANDUM

99-cr-106-bbc

Defendant Robert Flemister has written to the court asking for clarification of his August 19, 2011 letter that the court construed as a motion under 18 U.S.C. § 3582 for a reduction in his sentence under the 2010 amendment to the crack cocaine guidelines. Defendant's motion was denied in an order entered on December 27, 2011. Now defendant says he did not intend his August 19, 2011 letter to be construed as a §3582 motion. He seeks clarification from the court whether the December 27, 2011 denial was based upon the 2008 guideline reduction or the 2010 guideline reduction.

A review of the file reveals that defendant filed a § 3582 motion in 2008 contending that he was entitled to a two-level reduction in his base offense level under the amendments relating to crack cocaine offenses. In an order entered on December 31, 2008, I explained

that although technically defendant would be entitled to a reduction, practically, it would make no difference in his sentence. His guideline sentence was constrained by the statutory maximum sentence of 20 years to which he was subject. A two-level reduction would have resulted in a offense level of 42, which with his criminal history category of II would produce a range of 360 months to life, which is higher than the 240-month sentence he is serving.

Nothing has changed since the 2008 order denying his § 3582 motion. Even though the guidelines for crimes involving distribution of crack cocaine have been lowered and given retroactive effect, it makes no difference to defendant. It makes no sense for defendant to seek such a reduction. As before, a two-level reduction would result in a sentence that is higher than the 240-month sentencing he is currently serving.

Entered this 8th day of February, 2012.

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

