IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

00-cr-118-bbc

v.

CAROL D. ARMSTRONG,

Defendant.

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Defendant Carol D. Armstrong has filed a motion for reconsideration of the August 21, 2015 order denying her motion for a reduction in her 360-month sentence. Defendant believes that her sentence should be lowered under the 2014 amendments to the sentencing guidelines, which have the effect of lowering sentences for certain defendants sentenced previously for drug offenses.

In the August 2015 order denying defendant's motion, I stated that defendant had been sentenced as a career offender and for that reason was not eligible for a reduction. As defendant points out, this statement was erroneous. In fact, defendant's sentence was not based on the career offender guidelines, although she qualified as a career offender. Instead, because her offense level under the drug guideline was higher than her offense level as a career offender, her sentence was determined on the basis of the amount of drugs for which she was held accountable, together with the enhancements to her sentence for role in the

offense and for obstruction of justice. Her total offense level at the time of sentencing was 40 (34 levels for conspiring to distribute at least 22 kilograms of cocaine; four levels for her role as an organizer or leader of a conspiracy; and two levels for obstruction of justice). With a criminal history of VI and an offense level of 40, defendant had a guideline imprisonment range of 360 - 480 months. (The actual imprisonment range was 360 months to life, but the statutory maximum was 40 years.) She was sentenced at the bottom of the guideline range, to a sentence of 360 months.

Although it was error to say that defendant's motion had to be denied on the ground that she had been sentenced as a career offender, it was not error to deny her motion. Even with the reduction in her base offense level resulting from the new amendments, her guideline sentencing range does not fall below the 360 to 480 month guideline range that applied to defendant when she was sentenced in 2001. The 2014 amendments to the drug guidelines reduce defendant's base offense level from 34 to 32. When that offense level is increased by four levels for being an organizer or leader of a conspiracy and increased again by two levels for obstruction of justice, defendant's total offense level under U.S.S.G. § 2D1.1 is 38, two levels below her original total offense level of 40. However, her guideline sentence does not change. With her criminal history category of VI and her new offense level of 38, her sentencing guideline range remains 360 to 480 months. Therefore, defendant has no ground on which to claim relief under § 3582(c)(2).

In her motion for reconsideration, defendant suggests that the court review its 2001 determination that she was a career criminal offender, because some of the crimes that led

to making her a career offender should not have been included in the calculation. Even if defendant is correct, this court has no authority to review such a contention under § 3582(c)(2). That statute does not authorize a sentencing court to change any sentence previously imposed except "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994*o*."

Defendant makes an additional request. She asks the court to redact her presentence report to omit mention of certain crimes, either because they should not have been included in the report and used to increase her offense level or because they may tend to prejudice any pardon application she might make. Again, nothing in § 3582(c)(2) gives this court authority to amend a presentence report, so this request must be denied as well.

Defendant's last request in her motion for reconsideration is for relief from her sentence under 28 U.S.C. § 2255. She acknowledges that her motion is late, but she argues that her delay should not prevent her from appealing because she had no incentive to challenge the erroneous calculation of her criminal history at the time she was sentenced. This request must be denied because defendant filed one and possibly two § 2255 motions in 2002. Under 28 U.S.C. § 2255(h), she cannot file a second (or third) motion for post conviction relief in this court unless she obtains certification to do so from a panel of the Court of Appeals for the Seventh Circuit. To obtain such certification, she would have to show the court of appeals either (1) that her new motion contains newly discovered evidence "that, if proven, and viewed in the light of the evidence as a whole, would be sufficient to

establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense;" or (2) that she is relying on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable."

ORDER

IT IS ORDERED that the following motions filed by defendant Carol D. Armstrong are DENIED:

1. Motion for reconsideration of her motion for reduction of her sentence under 18 U.S.C. § 3582(c)(2);

2 Request for review of the 2001 finding that she is a career offender;

3. Request for redaction of her presentence report; and

4. Motion for post conviction relief under 28 U.S.C. § 2255.

Entered this 28th day of September, 2015.

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