

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL NEELY,

Defendant.

ORDER

01-cr-045-jcs

Defendant Paul Neely has filed a motion pursuant to 18 U.S.C. § 3582, seeking a reduction of the amended sentence imposed upon him on January 3, 2003. During Judge Shabaz's medical leave, I am handling the cases assigned to him, including this one.

Defendant's original total adjusted offense level was 25; he was sentenced to 125 months, which was above the sentencing guideline range of 84 to 105 months because Judge Shabaz departed upward one range to sentence defendant as if he were in criminal history category V. Under the amended guidelines, his base offense level is 24, increased by two levels for possession of a gun and reduced by three levels for acceptance of responsibility. With an offense level of 23 and a criminal history category of IV, defendant has an advisory guideline range of 70 to 87 months.

Defendant asks for a sentence of 70 months, at the bottom of the amended sentencing range. The government argues for a proportional decrease to the top of the amended range, or 87 months. (It does not argue that an upward departure is required.)

I am persuaded that in this case a reduction to a term near the top of the reduced range is justified as a response to the sentencing discrepancy between crack and powder cocaine offenses. The reduced sentence will be four levels below defendant's original sentence, but it will still carry out the statutory purposes of sentencing, which include reflecting the severity of defendant's crime (and of his past criminal history, which began when he was 14), protecting the community and achieving parity with the sentences of similarly situated defendants.

Defendant has not asked for a sentence below the guideline range and I am not inclined to give him one under whatever authority I have under Kimbrough v. United States, 128 S. Ct. 558 (2007).

ORDER

IT IS ORDERED that the amended judgment and commitment order entered on January 23, 2003, is AMENDED to provide that the sentence imposed on defendant Paul Neely is reduced to 85 months. In all other respects, the judgment and commitment order

remains as entered on January 3, 2003.

Entered this 9th day of May, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge