

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

STACEY MILLER,

Defendant.

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OPINION AND ORDER

01-cr-71-bbc

Defendant Stacey Miller has moved for a reduction of his sentence under 18 U.S.C. § 3582, contending that he qualifies for a reduction under the retroactive sentencing guidelines amendment for cocaine base (crack cocaine). This is not the first time he has filed such a motion. He filed a similar motion on December 30, 2009, dkt. #175, when the guidelines were amended to reduce the disparity between sentences for crack cocaine and powder cocaine. Amendment 706, U.S.S.G. App. C Supp., Vol.III, pp. 226-31 (2011). This motion was denied on January 4, 2010, as not applying to defendant because he had been sentenced as a career offender and the amendment did not affect the career offender guidelines. Dkt. #176.

Defendant filed a second motion for relief under 18 U.S.C. § 3582 on November 1,

2010. Dkt. #185. That motion was denied on November 4, 2010, on the same ground as the 2009 motion. Defendant appealed and the court of appeals dismissed the appeal.

When I denied these two motions for reduction of sentence under § 3582, I overlooked the fact that although defendant was a career offender, he had been sentenced on the basis of the drug quantity attributable to him. The quantity of crack cocaine for which he was held responsible gave him a higher offense level than his offense level as a career offender (38 as opposed to 37). That oversight did not change the result because defendant would not have qualified for a reduction under the amendment in either event. The sentencing guideline range for offense levels 37 and 38 is exactly the same: 360 months to life. The offense level is determined by statute, with the statutory maximum penalty determining the offense level. Under 21 U.S.C. § 841(b)(1)(A)(iii), the statutory maximum penalty for crimes involving 280 grams of cocaine base is ten years to life, which translates to an offense level of 37 under U.S.S.G. § 4B1.1. Thus, there would have been no point in recognizing defendant's entitlement to a reduction in his sentence on the ground that he had been sentenced for drug quantity and not as a career offender. His sentence could be reduced no more than one level and his guideline range would have remained 360 months to life.

Defendant filed his present § 3582 motion on March 11, 2013, dkt. #194. It is not a consecutive motion because he is relying on a newer amendment to the guidelines,

Amendment 750, enacted in 2011. (Amendment 759 was enacted at the same time; it makes Amendment 750 retroactive. Amendments 750 and 759, U.S.S.G. App. C Supp., Vol. III, pp. 391-98 & 416-21. (2011).) This amendment further reduces the sentencing guideline ranges for crack cocaine offenses, but it does not apply to persons such as defendant who qualify for career offender status. His guideline range would not change if he were resentenced as career offender. It would still be 360 months to life.

In his motion, defendant asked the court to consider his efforts at rehabilitation if it resentenced him. Since he is not eligible for resentencing, I cannot consider those efforts, but I can commend defendant on them and express my hope that he will continue to work to improve his chances of succeeding when he leaves prison.

#### ORDER

IT IS ORDERED that defendant Stacey Miller's motion for a sentence reduction under 18 U.S.C. § 3582, dkt. #255, is DENIED.

If defendant files any further motions for reduction of sentence, the clerk of court is directed not to file them but to send them to chambers for review. If they raise any issues that have not been addressed and that the court is authorized to address, they will be

docketed and resolved. Otherwise, they will be placed in a file and not acted upon.

Entered this 19th day of March, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge