

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

SARAH LYNN POLACEK,

Defendant.

ORDER

03-C-0508-C

01-CR-0104-C-01

Defendant Sarah Lynn Polacek has filed a motion for reduction of sentence “based on 5K2.13 and 3553 law and extraordinary post conviction rehabilitation efforts.” In support of the motion, defendant alleges that she has initiated and completed a variety of educational and psychological counseling and programming classes, has shown an exemplary work ethic and renewed her strong spiritual conviction of right and wrong. Defendant argues that her efforts justify a departure from the guidelines, particularly when considered together with the reduced mental capacity she exhibited at the time she committed the offense for which she was convicted.

Unfortunately for defendant, her sentence cannot be changed at this time, regardless

of the efforts she has made to change her criminal behavior and thinking. Once a district court imposes a sentence, the court has no authority to change the sentence, with two exceptions: (1) the defendant appeals her sentence successfully and the court of appeals returns the case to the district court for resentencing or (2) the government files a motion for reduction of sentence pursuant to Fed. R. Civ. P. 35. Neither exception applies in this case. Defendant's appeal was dismissed before it was heard on the merits and the government has never moved for a reduction of sentence. Moreover, the time in which the government could file such a motion has expired.

Defendant seems to think that the court could reduce her sentence under the sentencing guidelines. If so, she is wrong. The guidelines apply only when a defendant is being sentenced; once the sentencing has occurred, the guidelines cannot be relied upon to win a reduction of time in custody.

It is encouraging that defendant has worked as hard as she has to make the most of her term of incarceration. Her record suggests that she is reclaiming the values and standards she grew up with and turned away from as an adolescent and young adult. If so, her chances for making a successful return to society are good. It could be argued that such efforts should be rewarded with a reduction in the time defendant must serve in custody. However, Congress has determined that sentences must be served in full and that courts may not reduce them except in the two specific instances described above.

ORDER

IT IS ORDERED that defendant Sarah Lynn Polacek's motion for reduction of sentence is DENIED.

Entered this 25th day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge