

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERRY McCOY,

Defendant.

ORDER

04-cr-181-jcs

Defendant Jerry McCoy has filed a motion pursuant to 18 U.S.C. § 3582, seeking a modification of the sentence imposed upon him on March 5, 2008. While Judge Shabaz is on medical leave, I am handling defendant's motion for a reduction of his sentence, as well as his motion to be present in person at any hearing related to his § 3582 motion. Both motions will be denied.

To obtain a reduction in his sentence under § 3582 and Amendment 706, defendant must show that he was sentenced for possession or distribution of crack cocaine. My review of defendant's file shows that he was charged with possession and distribution of powder cocaine. It is true, as defendant says, that Judge Shabaz mentioned crack cocaine at defendant's sentencing, but it does not follow that the judge based his sentence on the crack

cocaine guidelines. He did not. Therefore, defendant is not eligible for a sentencing reduction under § 3582.

ORDER

IT IS ORDERED that defendant Jerry McCoy's § 3582 motion for a sentence reduction under Amendment 706 and 18 U.S.C. § 3582 is DENIED.

IT IS FURTHER ORDERED that defendant's motion to be present at a hearing on his § 3582 motion is DENIED as moot.

Entered this 15th day of July, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge