

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICKEY A. RANDLE,

Defendant.

ORDER

04-cr-188-bbc

On September 6, 2011, defendant filed a motion under 18 U.S.C. § 3582 for a reduction in his sentence under the retroactive amendment to the crack cocaine guidelines. On November 22, 2011, the court granted the motion and defendant's sentence was reduced from 316 months to 254 months. On January 9, 2012, defendant filed a notice of appeal of the November 22, 2011 order. Because defendant's notice of appeal was untimely and he presented no justification for his delay in filing his notice of appeal, the court of appeals dismissed it as untimely under Fed. R. App. P. 42(b).

Now defendant has filed a motion and memorandum in support of reinstatement of his appeal under Fed. R. App. 5. He believes, incorrectly, that this court can give him permission to take another appeal of the November 22, 2011 order. In fact, this court has no authority to do so. Under Fed. R. App. 5, the petition for permission to appeal must be

filed with the court of appeals within the time specified by statute for filing a notice of appeal. In defendant's case, that time has passed. He cannot use Rule 5 rule as a "do over" on his first untimely appeal.

In his motion, defendant also asks the court to consider a reduction in his sentence under the Bureau of Prisons' Compassionate Release/Reduction in Sentence Procedure 5050.49(5), which allows an inmate to request a reduction in his sentence based on the death or incapacitation of a family member caregiver. Defendant explains that his wife and the mother of their six children died on January 31, 2014 and he is needed at home to care for the children. He also provides evidence of his rehabilitative efforts while incarcerated, along with letters from his family to support his request for a reduction in his sentence. Although I am sympathetic to defendant's loss and commend him on his achievements while in prison, I have no authority to authorize a reduction in his sentence on either basis. Congress does not allow a sentencing court to reduce a sentence after it has been imposed except under the circumstances set out in 18 U.S.C. § 3582, none of which include rehabilitative efforts. A court may reduce a sentence only if the United States Government has moved for a reduction of defendant's sentence in recognition of substantial assistance that the defendant has provided; the court of appeals has reversed the defendant's conviction or sentence; the Director of the Bureau of Prisons has asked the court for a reduction of defendant's sentence under § 3582(c)(1)(A), or the sentencing range set by the United

States Sentencing Commission for defendant's crime has been lowered. If defendant wishes to pursue a petition under the Compassionate Release/Reduction in Sentence Procedure 5050.49(5), he should make that request of the warden at the institution. If his request is granted, the Director of the Bureau of Prisons will contact the United States Attorney and recommend that it bring a motion to reduce defendant's sentence. Absent a motion from the government, there is nothing this court can do to reduce defendant's sentence.

ORDER

Defendant's motion for permission to appeal under Fed. R. App. 5 and his motion for reduction of sentence under Bureau of Prisons Program Statement 5050.49 are DENIED for lack of jurisdiction.

Entered this 11th day of March, 2014.

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