

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

TONY LISTER,

Defendant.

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ORDER

04-cr-74-bbc

Defendant Tony Lister has filed a motion pursuant to 18 U.S.C. § 3582, seeking a reduction of the sentence imposed upon him on December 16, 2004.

When defendant was sentenced, his total adjusted offense level was 38 and his criminal history category was IV. He was sentenced to a term of imprisonment of 405 months, which was at the top of the sentencing guideline range of 324 to 405 months.

Under the amended guidelines, both defendant's base offense level and his adjusted offense level are 36 because he was not given any enhancements or reductions at the time of his original sentencing. With a criminal history category of IV, defendant has an advisory guideline range of 262 to 327 months.

Defendant has asked for a sentence of 262 months, at the bottom of the amended

sentencing range. The government advocates a sentence at the top of the amended range. or 327 months. It argues that the sentencing judge believed that a significant sentence was necessary because of the large amounts of cocaine base that defendant delivered, his prior felony conviction for the same kind of criminal activity and his lengthy criminal record.

Defendant's extensive distribution of crack cocaine and prior criminal history raise concerns about his ability and inclination to avoid returning to criminal activity when he is released from prison, but I believe that a sentence in the midpoint of the sentencing range will provide sufficient punishment to hold defendant accountable, protect the community, reflect the seriousness of the crime, provide defendant an opportunity for rehabilitative programs and achieve parity with the sentences of similarly situated offenders.

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 judgment and commitment order signed on December 17, 2004 is AMENDED to provide that the sentence imposed on defendant Tony Lister is reduced to 294 months. In all other respects, the judgment and commitment order remains

as signed on December 17, 2004

Entered this 6th day of May, 2009.

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