

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICHOLAS THAYER,

Defendant.

ORDER

05-cr-39-bbc-11

Defendant Nicholas Thayer has moved for a reduction in his sentence under 18 U.S.C. 3582, contending that he is entitled to a reduced sentence by virtue of the change in U.S.S.G. § 2D1.1. Unfortunately for defendant, his sentence is not one affected by the Sentencing Commission's decision to reduce the disparity between the penalties for crack cocaine and those for powder cocaine.

It is true that defendant was convicted of a crack cocaine offense, but his sentence was not determined by the guidelines. His guideline sentencing range of 78-97 months was overridden by the statutory minimum that applied to him after he pleaded guilty to conspiring to possess crack cocaine with the intent to distribute and to distribute it, with the conspiracy involving 50 grams or more of crack cocaine. Under 21 U.S.C. § 841(b)(1)(A)(iii), the

statutory minimum for such a crime is ten years.

Unless and until Congress reduces the statutory penalty for defendant's crime, his sentence must remain as imposed. The Sentencing Commission's amendments to its own guidelines do not affect the congressional decision to make the distribution of 50 grams or more of crack cocaine an offense subject to a ten-year minimum sentence.

ORDER

IT IS ORDERED that defendant Nicholas W. Thayer's motion for reduction of his sentence under 18 U.S.C. § 3582 is DENIED.

Entered this 7th day of July, 2008.

BY THE COURT:

Barbara B. Crabb

BARBARA B. CRABB
District Judge