

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARRIELL CROSS,

Defendant.

ORDER

05-cr-94-jcs

Although he has received one reduction in his sentence under 18 U.S.C. § 3582 because the change in the amendments relating to crack cocaine penalties, defendant Darriell Cross has moved for another reduction, this time on the basis of the change made to U.S.S.G. § 4A1.2(a)(2) (the guideline governing the calculation of criminal history points for offenses that are consolidated for sentencing).

The new version of § 4A1.2(a)(2) simplifies criminal history calculations by treating two prior convictions as one if the resulting sentences were imposed on the same day, provided that the two offenses were not separated by an arrest. Defendant wants this change applied to his sentence to reduce his criminal history score and with it, his guideline range.

Unfortunately for defendant, the Sentencing Commission did not make the change

in § 4A1.2(a)(2) retroactive. This means that it does not apply to sentences that became final before the amendment was promulgated. Defendant was sentenced on December 2, 2005. His sentence became final on or about May 1, 2007. Section 4A1.2(a)(2) did not take effect until November 1, 2007, well after defendant's sentence had become final.

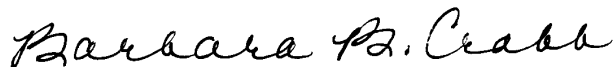
Because defendant does not qualify for a reduction in his sentence under § 3582 and § 4A1.2(a)(2), his motion will be denied.

ORDER

IT IS ORDERED that defendant Darriell Cross's motion for a reduction in his sentence under 18 U.S.C. § 3582 and Amendment 709 (relating to U.S.S.G. §4A1.2(a)(2)) is DENIED.

Entered this 7th day of July, 2008.

BY THE COURT:

A handwritten signature in black ink, reading "Barbara B. Crabb". The signature is written in a cursive, flowing style.

BARBARA B. CRABB
District Judge