

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

---

UNITED STATES OF AMERICA

ORDER

v.

04-cr-90-wmc

JOHN NEWCOMB

---

Defendant John Newcomb has filed a motion for a reduction in sentence under 18 U.S.C. § 3582(c)(2), seeking release from prison on his own “personal recognizance.” (Dkt. # 131). The motion must be denied for the reasons set forth briefly below.

In 2004, a grand jury in this district returned an indictment against Newcomb, charging him with manufacturing a controlled substance, namely, methamphetamine, and other, related offenses in violation of 21 U.S.C. §§ 841(a)(1), 841(c)(2), 843(a)(6). *See United States v. Newcomb*, Case No. 04-cr-90-jcs (W.D. Wis.). After a jury found Newcomb guilty as charged, the district court sentenced him to serve 180 months in federal prison, followed by a five-year term of supervised release. The Seventh Circuit affirmed that conviction in an unpublished opinion. *See United States v. Newcomb*, 139 F. App’x 746, 747-48 (7th Cir. July 19, 2005).

Newcomb contends that he is entitled to a reduction in sentence pursuant to a proposed amendment to the Sentencing Guidelines known as “All Drugs Minus Two.” Newcomb’s request for a reduction or modification in the term of his imprisonment is governed by 18 U.S.C. § 3582(c). Under this statute, a district court may modify “a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission” only where such a reduction is “consistent with” applicable policy

statements issued by the Sentencing Commission. 18 U.S.C. § 3582(c)(2); *see also Dillon v. United States*, 560 U.S. 817, 130 S. Ct. 2683, 2691 (2010) (outlining the two-step process for determining whether a defendant is eligible for relief under § 3582(c)(2)). The Sentencing Commission has promulgated policy statements regarding a court's consideration of a motion under 18 U.S.C. § 3582(c)(2) at § 1B1.10 of the United States Sentencing Guidelines. According to the applicable policy statement, a reduction in a defendant's term of imprisonment is authorized only if the amendment that the defendant relies upon is listed in § 1B1.10(c) of the Sentencing Guidelines. *See* U.S.S.G. § 1B1.10(a).

The amendment identified by Newcomb has been proposed, but has not been formally adopted. Assuming that the proposed amendment will be adopted, it will not take effect until November 2014. Even if the proposed amendment is adopted, it is not clear whether the amendment will be made retroactive. Because it is uncertain whether the proposed amendment will benefit Newcomb, his motion must be denied as premature.

#### ORDER

IT IS ORDERED that defendant John Newcomb's motion for a reduction in sentence under 18 U.S.C. § 3582(c)(2) (dkt. # 131) is DENIED as premature.

Entered this 5th day of May, 2014.

BY THE COURT:

/s/

---

WILLIAM M. CONLEY  
District Judge