

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DELON D. WALLER,

Defendant.

ORDER

06-cr-115-bbc

Defendant Delon D. Waller has filed a motion pursuant to 18 U.S.C. § 3582, seeking a reduction of the sentence imposed upon him by the Honorable John C. Shabaz on October 19, 2006. During Judge Shabaz's medical leave, I am handling the cases assigned to him, including this one.

At sentencing, defendant's total adjusted offense level was 31 and his criminal history category was IV; he was sentenced to 188 months, which was at the top of the sentencing guideline range of 151 to 188 months. Under the amended guidelines, his base offense level is 32, less three levels for acceptance of responsibility. With an offense level of 29 and a criminal history category of IV, defendant has an advisory guideline range of 121-151 months.

Defendant asks for a sentence of 121 months, at the bottom of the amended sentencing range. The government argues for a proportional decrease to near the top of the amended range, or 151 months.

Defendant qualifies for the two-level reduction in his range. The amount of drugs for which he was held responsible is near the bottom of the applicable drug quantity range. I would be inclined to reduce his sentence to the bottom of the new range were it not for the substantial evidence in the presentence report of his tendency toward violence and his possession and use of guns. In light of this information, I believe that a sentence at the middle of the guidelines range is both necessary and sufficient to carry out the statutory purposes of sentencing, which include protecting the community and achieving parity with the sentences of similarly situated defendants.

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 amended judgment and commitment order signed on October 19, 2006 is AMENDED to provide that the sentence imposed on defendant Delon D. Waller is reduced to 136 months. In all other respects, the judgment and commitment

order remains as signed on October 19, 2006.

Entered this 31st day of December, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge