

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

-----  
UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY HURNS,

Defendant.  
-----

ORDER

06-cr-117-bbc-01

Defendant Timothy Hurns was sentenced initially by Judge Shabaz to a sentence of 300 months in prison. At sentencing, he had been found to be a career offender on the ground that his crime of walking away from a community corrections center was a crime of violence. At the time, his sentence comported with the law in this circuit. After the Supreme Court decided in Begay v. United States, 553 U.S. 137, 145 (2008), that “crimes of violence” require a showing of purposeful, violent, and aggressive conduct,” the court of appeals remanded defendant’s case to this court for re-sentencing. Because Judge Shabaz was on medical leave, the case was assigned to me. At his re-sentencing, defendant’s sentence was reduced by half, for a term of imprisonment of 150 months.

Now defendant has moved for a second reduction in his sentence under 18 U.S.C. § 3582, which allows a court to reduce a previously imposed sentence when the Sentencing Commission has reduced the guideline range for the offense and the reduction has been

made retroactive. Under the amendments implementing the Fair Sentencing Act of 2010 defendant's guideline range would be 140 to 175 months. (His base offense level would be 28 because he is being responsible for marijuana equivalent of more than 400 kilograms and less than 700 kilograms; he has a two-level increase for possessing firearms in connection with the offense; he has another two-level increase for his role in the offense; and he has a three-level downward adjustment for his acceptance of responsibility. His total offense level is 29; his criminal history score is V; and his revised guidelines are 140-175 months.) The United States has advised the court that it would not object to a reduction of defendant's sentence to a term of imprisonment of 140 months, the bottom of the revised guidelines. (This is not a resentencing, so defendant is not eligible for the benefit of the lower minimum and maximum sentences specified in the Fair Sentencing Act of 2012. United States v. Foster, No. 12-2699, 20 WL 466201 (7th Cir. Feb. 8, 2013) (proceeding under § 3582 is not full resentencing but is limited to application of changes in guidelines) (citing Dillon v. United States, 130 S. Ct. 2683 (2010)).

#### ORDER

IT IS ORDERED that defendant Timothy Hurns's motion for a reduction of his sentence under 18 U.S.C. § 3582 is GRANTED; his term of imprisonment is reduced to 140 months. In all other respects, the judgment and commitment order entered on February 20,

2009 remains as entered.

Entered this 25th day of February, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge