

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERARDO VALTIERRA,

Defendant.

ORDER

06-cr-126-bbc

Defendant Gerardo Valtierra has moved for a reduction of his sentence under 18 U.S.C. § 3582(c)(2), which authorizes a sentencing court to reduce the term of imprisonment “in the case of a defendant who has been sentenced to a term of imprisonment that has subsequently been lowered by the Sentencing Commission.” He argues that he is entitled to a reduction in his sentence because the guidelines applicable to his offense have been reduced.

When defendant was sentenced, he was found to have been responsible for more than 150 kilograms of cocaine. Although he was charged with conspiracy to possess cocaine and cocaine base with intent to distribute and there was evidence at trial about crack cocaine, I did not take into account any of the crack cocaine when sentencing him. I based his sentence solely on the 194 kilograms of powder cocaine for which I found him responsible. Defendant says in his motion that he was found guilty of possessing with intent to distribute

more than 50 grams of cocaine base plus 5 kilograms of cocaine, which would give him a marijuana equivalent of 2010.2 kilograms of marijuana equivalent, but his statement is not borne out by the presentence report. The probation office calculated defendant's base offense level as 38 because his relevant conduct involved "at least 150 kilograms of cocaine." It did not take any crack cocaine into consideration. PSI, p. 17.

The recent amendments to the guidelines (Amendments 706 and 748) were intended to reduce the disparity between sentences for crack and powder cocaine and apply only to sentences based on crack cocaine. They have no application to defendant's sentence, which was based solely on the amount of powder cocaine for which he was held responsible.

ORDER

IT IS ORDERED that defendant Gerardo Valtierra's motion for a reduction in his sentence under 18 U.S.C. § 3582 is DENIED.

Entered this 31st day of July, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge