

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICOLE L. HOWE,

Defendant.

MEMORANDUM

06-cr-216-jcs

The Court of Appeals for the Seventh Circuit has remanded this case to allow the sentencing court to state whether it would have sentenced defendant Nicole L. Cole differently had it known about Kimbrough v. United States, 128 S. Ct. 558, 575 (2007). Because the sentencing judge, the Honorable John C. Shabaz, is on medical leave, I will take up the matter in his absence.

Not having been the sentencing judge, it is difficult for me to say definitively whether the knowledge of Kimbrough would have brought about a different sentence for defendant. However, after reading the presentence report and the reasons Judge Shabaz gave for imposing the sentence he did, I am not persuaded that Judge Shabaz would have changed defendant's sentence had he known about Kimbrough at the time of sentencing. In

sentencing defendant, Judge Shabaz emphasized defendant's prior criminal history and the fact that she resumed dealing crack cocaine within six months of her release from state prison following her conviction for the same course of conduct. He stated that he did not believe her criminal history score overstated the seriousness of her criminal behavior. Finally, he balanced her substance abuse problems and her supportive family against the nature of the offense and the quantities of controlled substances involved before concluding that a sentence at the bottom of the advisory guidelines range would be appropriate.

Of course, Judge Shabaz would have reduced defendant's offense level by two, had he known then about the change in the sentencing guidelines, but this result has been accomplished in an order I entered on March 21, 2008. Defendant is serving a sentence of 100 months, instead of the 120 months to which she was sentenced by Judge Shabaz.

In summary, taking into account the careful consideration that Judge Shabaz gave to the case and finding no persuasive reason to believe that the sentence he imposed is

unreasonable, I am not inclined to give defendant a lower sentence in light of Kimbrough.

Entered this 29th day of July, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge