

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEMETRIUS PETTY,

Defendant.

OPINION AND ORDER

10-cr-188-bbc
12-cv-320-bbc

Defendant Demetrius Petty has filed a motion for post conviction relief under 28 U.S.C. § 2255. He contends that he was subjected to an unconstitutionally harsh and unreasonable sentence and that his counsel was constitutionally ineffective for not telling him that he was subject to a mandatory minimum term of 120 months and promising him a sentence of less than ten years. The motion will be denied as to his first claim, but defendant will have an opportunity to add more details to his second claim.

Defendant cannot succeed on his claim that it is unconstitutionally harsh and unreasonable to impose a 120-month sentence on a person who possessed less than 26 grams of crack cocaine with the intent to distribute it. First, he was sentenced on his plea of guilty

to the charge of conspiracy to distribute 280 grams or more of crack cocaine, not for the much smaller amount he possessed when he was arrested. Second, Congress made the decision that judges must impose a sentence of at least ten years on persons found guilty of distributing 280 grams or more of crack cocaine. 21 U.S.C. § 841(b). This court has no authority to ignore that law and only Congress can change it.

Defendant's second claim is that his counsel did not tell him that he was subject to a mandatory minimum sentence of 120 months but instead promised him he would get a shorter sentence. Defendant has not elaborated on this claim, such as by explaining exactly what his counsel told him, or where and when the conversation took place. More important, at his plea hearing on May 24, 2011, defendant told the court that he had had sufficient time to talk with his counsel about pleading guilty and about the consequences of doing so. When he was told that his minimum sentence would be ten years, he did not raise any objection. One would expect that if his counsel had never warned him that his crime carried a ten-year minimum sentence, he would have said something to the court when he learned of the mandatory minimum. Instead, he told the court under oath that he understood he was subject to a minimum mandatory sentence of ten years up to a maximum of life. Plea Hrg. Trans., dkt. #141, at 5.

Nevertheless, I will give defendant an opportunity to file a supplement to his motion, explaining exactly what his lawyer told him about his possible sentence, when and where the

conversations took place and whether any other person was present at the time. If defendant does not file such a supplement, I will assume that he does not want to pursue his motion and it will be dismissed.

ORDER

IT IS ORDERED that defendant Demetrius Petty may have until June 1, 2012, in which to file a supplement to his motion for post conviction relief, as explained above. If defendant does not file such a supplement, his motion will be dismissed for his failure to show that he is in custody illegally or unconstitutionally.

Entered this 9th day of May, 2012.

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