

IP 98-0121-CR 2 H/F USA v Clarke
Judge David F. Hamilton

Signed on 07/07/08

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Cause No. IP 98-121-CR-2-H/F
)
 OSMOND CLARKE,)
)
 Defendant.)

ENTRY ON MOTION FOR REDUCED SENTENCE

In 1999, a jury found Osmond Clarke guilty on three counts of distributing more than 50 grams of crack cocaine and one count of carrying a firearm during and in relation to a drug trafficking crime. The court sentenced Clarke to 151 months on the three distribution counts, to run concurrently, and 60 months on the firearm charge, to run consecutively after the distribution sentences. The convictions and sentence were affirmed on appeal. *United States v. Clarke*, 227 F.3d 874 (7th Cir. 2000).¹

Clarke has now filed a motion for a reduction of his sentence based on 18 U.S.C. § 3582(c) and Amendments 706 and 711 to the Sentencing Guidelines,

¹Clarke's first name appears in the court records with two spellings, Osmond and Osmund. The court has adopted the Osmond spelling used by Clarke in his own recent filings.

which retroactively reduced the base offense levels for crack cocaine offenses. The government acknowledges that Clarke is legally eligible for a possible reduction but argues that the original sentence remains a reasonable one that should not be reduced.

The original sentence on the three crack distribution charges was based on a sentencing guideline range of 151 to 188 months, at criminal history category I and offense level 34, based on a quantity of approximately 195 grams of crack cocaine in the three counts of conviction for distribution. The additional 60 consecutive months on the firearm charge was the mandatory minimum sentence for that charge.

Under Amendments 706 and 711, Clarke's offense level for the three distribution charges would be 32, with a sentencing range of 121 to 151 months. The amendments do not affect the firearm sentence.

Relief under section 3582(c) is not mandatory; the court must consider the sentencing factors relevant under 18 U.S.C. § 3553(a) and must exercise its discretion in deciding the motion. *E.g., United States v. Vautier*, 144 F.3d 756, 759-60 (4th Cir. 1998). After further consideration and review of the case, the court is satisfied that the original sentence remains reasonable and appropriate, and the court denies Clarke's motion for a reduced sentence. The most important factor here is protection of the public. See 18 U.S.C. § 3553(a)(2)(C). The original

sentence remains within the new guideline range, though it is at the top of the range rather than the bottom.

Clarke's role in the distribution scheme was that of an "enforcer." He was present for several sales of crack cocaine, carried a firearm, and was even responsible for searching a cooperating individual who was wearing a "wire" at the time. The three distribution counts were combined for purposes of calculating the relevant drug quantity, but the court finds it significant that Clarke was repeatedly involved in those transactions as the "muscle," with a firearm to protect the drugs and the money. Although his search of the cooperating individual was unsuccessful, the prospects for violence if Clarke had discovered the wire are disturbing, to say the least. Clarke played a dangerous role in the distribution network. The danger he posed plays a greater role in the court's decision at this point than the specific drug quantity for which he is held accountable or the precise ratio between crack and powder cocaine for purposes of guideline calculations.

Accordingly, defendant Clarke's motion for a reduced sentence under 18 U.S.C. § 3582(c) is hereby denied.

So ordered.

Date: July 7, 2008

DAVID F. HAMILTON, CHIEF JUDGE
United States District Court
Southern District of Indiana

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