

NA 01-0021-CR 4 H/N USA v Johnson
Judge David F. Hamilton

Signed on 07/07/08

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Cause No. NA 01-21-CR-4-H/N
)
 PHILLIP JOHNSON,)
)
 Defendant.)

ENTRY ON MOTION FOR REDUCED SENTENCE

In 2002, the court sentenced defendant Phillip Johnson to 188 months imprisonment after he pleaded guilty to conspiracy to possess more than 50 grams of crack cocaine with intent to distribute and eight counts of distributing crack cocaine within 1000 feet of a protected place, such as a school or public housing property. See 21 U.S.C. § 860. The original sentence reflected a base offense level of 37, holding Johnson responsible for more than one kilogram of crack cocaine (level 36) with one additional level because of the protected places. See U.S.S.G. § 2D1.2(a)(2) and (c) (2002). The court gave Johnson a three level reduction for acceptance of responsibility. His criminal history was category III, producing a guideline range of 188 to 235 months in prison.

Johnson 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, which retroactively reduced the base offense levels for crack cocaine offenses. As explained below, the court grants the motion.

Johnson is legally eligible for a reduced sentence, and a two-level reduction of his offense level would produce a guideline range of 151 to 188 months. Relief under section 3582(c) is not mandatory, however. The court must consider the sentencing factors relevant under 18 U.S.C. § 3553(a). The question is whether the court should exercise its discretion to grant such relief, and if so, to what extent. The Sentencing Commission's 2007 amendments to application note 1 for U.S.S.G. § 1B1.10 show that, when deciding a motion under section 3582(c), the court may consider post-sentencing information. In particular, a defendant's record in prison may be highly relevant as an aggravating factor or a mitigating factor. The application note makes clear that the court may consider public safety, and the more general reference to post-sentencing conduct would clearly include a defendant's efforts at rehabilitation. See U.S.S.G. § 1B1.10, application note 1 (as amended effective March 3, 2008). Consideration of such information is consistent with the court's exercise of discretion by considering factors relevant under 18 U.S.C. § 3553(a).

The record now before the court indicates that Johnson has been formally disciplined for two incidents in prison. The first was an unspecified assault, for

which details are not available and for which he lost 30 days of good time credit. The second was for possession of a dangerous weapon, three pieces of sharpened metal, for which he lost 40 days credit. He also has completed several educational courses in prison, though the court does not have details.

Defendant Johnson currently has a projected release date of May 16, 2015. That date could change if he is deprived of additional “good time” credit. The record here is mixed, with both positive efforts toward rehabilitation and negative effects from the two disciplinary incidents. The Bureau of Prisons, however, has ample authority to impose discipline, including denial of good time credits and even pursuing criminal prosecution, if there is a serious problem with Johnson’s behavior in prison. The original sentence in this case was consistent with the guidelines applicable at the time, but was more severe than necessary to achieve the purposes of sentencing. Accordingly, the court grants Johnson’s motion for a reduced sentence and Johnson’s sentence is hereby REDUCED from 188 months to 151 months imprisonment. All other aspects of the sentence remain unchanged.

So ordered.

Date: July 7, 2008

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

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