

United States v. Lopez

01-CR-079-SM 08/27/08

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal No. 01-cr-79-1-SM

Opinion No. 2008 DNH 159

Carlos Lopez

ORDER

Defendant's motion to reduce his sentence, based on the United States Sentencing Commission's retroactive amendment of the "crack" cocaine guideline (Amendments 706 and 711), effective March 3, 2008, is necessarily denied.

United States Guideline § 1B1.10(a)(2)(B) makes clear that a reduction in a defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) based on the "crack" cocaine amendment, if the amendment would not have the effect of lowering the defendant's applicable guideline range. Here, defendant's guideline range was established by mandatory minimum sentences prescribed by statute – 20 years (240 months) with respect to Counts I through V, VII, and VIII, and 5 years (60 months) to be served consecutively with respect to Count VI. The retroactive "crack" cocaine amendment does not effectively lower the applicable guideline range in defendant's case – which remains, by statute, 240 months and 60 months to be served consecutively.

Conclusion

The motion to reduce sentence (document no. 91) is denied.

SO ORDERED.


Steven J. McAuliffe
Chief Judge

August 27, 2008

cc: Mark E. Howard, Esq.
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U.S. Probation
U.S. Marshal