

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

02-CR-275

JIMMY ALEJO,

Defendant.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

Defendant Jimmy Alejo moves for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(2) and United States Sentencing Guidelines (“Guidelines”) § 1B1.10, in light of Amendments 706 and 715 to the Guidelines reducing the base offense level listed on the drug quantity table for most cocaine base (crack cocaine) offenses. See U.S.S.G. § 2D1.1(c).

The decision whether to grant a motion pursuant to § 3582(c)(2) is within the discretion of the Court and should be made upon consideration of the factors set forth in § 3553(a), the Guidelines, and the policy statements of the Guidelines. See United States v. Regalado, 518 F.3d 143, 150-51; Cortorreal v. United States, 486 F.3d 742 (2d Cir. 2007); see also United States v. Jones, 2008 WL 4726292, at *1 (2d Cir. Oct. 29, 2008) (“As the statute thus makes clear, reduction is entirely discretionary and the court has substantial latitude in determining whether a reduction is warranted.”).

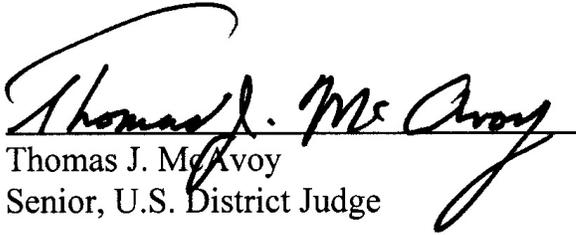
Here, although it appears that Defendant is eligible for a sentence reduction,

based upon consideration of the factors set forth in 18 U.S.C. § 3553(a), and the reasons supporting the initial sentence, the Court declines to grant the motion. See U.S.S.G. § 1B1.10(a)(1) (indicating that the Court "may reduce the defendant's term of imprisonment," thereby indicating that a resentencing is discretionary).¹ Defendant was afforded lenity at his original sentencing. This lenity included rejecting the recommendation by the probation department to increase Defendant's offense level by two levels for possession of a firearm, notwithstanding evidence concerning the presence of a firearm. Moreover, there is evidence that, after Defendant entered his guilty plea, and while he was supposed to be cooperating with the government, he continued to engage in drug trafficking. This lenity together with the seriousness of Defendant's offense and his post-offense conduct counsels against a further reduction in the sentence. To the extent that Defendant is raising the policy concerns identified in Gall v. United States, 128 S. Ct. 586 (2007), and Kimbrough v. United States, 128 S. Ct. 558 (2007), the Court finds that, under the facts and circumstances of this case, and in consideration of the relevant sentencing factors at § 3553(a), the original sentence is, and remains, appropriate and that no adjustment is warranted in this case. Stated otherwise, even if Defendant had the benefit of the reduced guideline range, taking into consideration the guideline recommendations and the policy considerations set forth at § 3553(a), the Court would, nevertheless, have sentenced Defendant to 151 months. Accordingly, Defendant's motion is DENIED.

¹ All else being equal and solely applying the two level reduction, the new guideline range would be 97-121 months (offense level 30, criminal history category I).

IT IS SO ORDERED.

Dated: November 7, 2008


Thomas J. McAvoy
Senior, U.S. District Judge