

range, the Defendant is eligible for sentence modification pursuant to § 3582(c). After review of the facts of this case, consideration of the effect of Amendment 706 and all § 3553(a) factors, the Court finds that good cause exists for reduction of Defendant's sentence within the revised guideline range. Accordingly, Defendant's motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c) (Dkt. # 193) is **granted**. Although Defendant's sentence will be reduced, the Court views the history and characteristics of the Defendant, the need to protect the community from further crimes, and the need to provide for just punishment as factors pertinent to determination of the extent of reduction. Defendant's criminal history includes several crimes of violence. Further, his conduct while imprisoned prior to 1998, which includes several violations, some carrying the potential of jeopardizing the safety of the institution and others, presents an aggravating factor. However, his improved and for the most part, good conduct record from 1998 to the present, palliates his behavior history.¹ These facts, weighed against the effect of Amendment 706 and the aforementioned § 3553(a) factors, compel this Court to reduce the sentence, but not to the minimum of the revised range.

In addition to Defendant's motion for reduction of sentence based on Amendment 706, Defendant also moves for a downward variance from the amended guideline range based on the continued unfair disparity between cocaine powder and crack cocaine. In support of his request for a variance, Defendant cites Kimbrough v. U.S., 128 S.Ct. 558, 564, 169 L.Ed.2d 481 (2007), and the sentencing factors found in 18 U.S.C. § 3553(a), as authority for a non-guideline sentence. Defendant urges the Court to vary from the revised guideline range and impose a sentence of no

¹ The U.S. Probation Office confirmed Defendant's good conduct record from late 1998 until August 2006, the date of the most recent Bureau of Prisons' Progress Report submitted by Defendant (See Dkt. # 199.) The Bureau of Prisons reports one misconduct since August 2006, a misconduct citation for Insolence to Staff, occurring on September 19, 2007.

more than 262 months, making use of the guideline range for cocaine powder to reach a proposed degree of variance. Defendant argues for further reduction of sentence based on the “interim” nature of the Sentencing Commission’s solution to the crack to powder cocaine ratio problem and continued unfair disparity in this ratio following Amendment 706. However, the only fact presented by Defendant in support of a variance is the incongruous treatment of crack cocaine offenses in the sentencing guidelines and underlying statutory scheme. This broad, categorical argument is not convincing because sentencing decisions must be grounded in case-specific considerations, not a general disagreement with broad-based policies pronounced by Congress and the Sentencing Commission. A sentencing court cannot completely ignore the ratio differences between cocaine powder and crack cocaine because the advisory guideline range, which remains relevant under § 3553(a) analysis, and the statutory minimum and mandatory sentences reflect Congress’ preferred ratio. See U.S. v. Garcia-Lara, 499 F.3d 1133, 1137 (10th Cir. 2007) (holding that the applicable guideline sentence and policy statements of the Sentencing Commission remain statutory factors that a district court must consider when fashioning a variance). Examination of an unwarranted disparity cannot be done in a vacuum. Rather, the statute states that a reasonable sentence should consider “the need to avoid unwarranted sentence disparities among defendants with *similar records who have been found guilty of similar conduct*.” See 18 U.S.C. § 3553(a)(6) (emphasis added). A court must consider each offender and each offense individually to determine if the disparity amounts to an unwarranted one when crafting a reasonable sentence. See U.S. v. Williams, 456 F.3d 1353, 1369 (11th Cir. 2006) (holding that a district court may not vary based solely on generalized disparity concerns, but rather a variance must reflect the individualized, case-specific factors in 18 U.S.C. § 3553(a)). No individualized factors have been presented that would distinguish the Defendant from

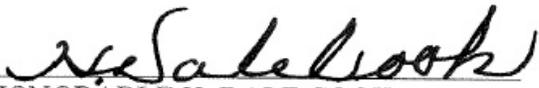
other similarly situated defendants. This Court does not find an unwarranted disparity exists in this case sufficient to justify a variance from the revised guideline range.

Accordingly, Defendant's motion for reduction of sentence (Dkt. # 193) is GRANTED. Defendant's motion for a downward variance (Dkt. # 198) is DENIED.

IT IS THEREFORE ORDERED that the terms of imprisonment originally imposed in Counts One and Two are reduced to 302 months imprisonment as to each count, said terms to run concurrent, each with the other.

IT IS FURTHER ORDERED that all other terms and provisions of the judgment are unchanged and shall remain the same as originally entered.

DATED this 18th day of July, 2008.


HONORABLE H. DALE COOK
Senior United States District Judge