

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:95CR26

UNITED STATES OF AMERICA

VS.

DARRYL FREDERICK MASHBURN

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ORDER

THIS MATTER is before the Court on the Defendant's motion to rescind the Order denying his reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and for reconsideration of that Order after the parties have had an opportunity to file briefs on the issue. For the reasons stated below, the motion is denied.

The Court has fully considered the arguments set forth in Defendant's motion for reduction of sentence pursuant to § 3582(c)(2), filed pursuant to the United States Sentencing Commission's amendment to the Guidelines regarding crack cocaine sentences and the fact that such amendment has been deemed to be retroactive to sentences imposed before the effective date of the amendment. The Court set forth its

reasoning in the June 2, 2008, Order denying the relief sought. The Court has again reviewed the relevant record and concludes that the sentence originally imposed by the Court was reasonable, was in accordance with existing Guidelines and law when entered, was consistent with the guidelines provided in 18 U.S.C. § 3553(a), and should not be disturbed.

The Court has further considered Defendant's conduct during his period of incarceration which includes such infractions as possession of drugs/drug items, escaping and contacting the public without authorization, being insolent to a staff member, refusing to take an alcohol test, and possessing intoxicants. The Court further notes that § 3582(c)(2) respects the discretionary authority of the Court and does not mandate what the Court must do where the Sentencing Commission has entered an amendment to the Guidelines. Further, for the foregoing reasons, the Court concludes that a further hearing on the motion is unnecessary and, therefore, denies the Defendant's motion.

IT IS, THEREFORE, ORDERED that the Defendant's motion to rescind Order denying relief pursuant to 18 U.S.C. § 3582(c)(2) and for reconsideration after briefing is hereby **DENIED**.

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Signed: June 24, 2008

A handwritten signature in black ink, appearing to read "Lacy H. Thornburg", written over a horizontal line.

Lacy H. Thornburg
United States District Judge

