

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-CR-0028-002-CVE
)	
ANTONIO MARTEL RANDLE,)	USM Number: 09671-062
)	
Defendant.)	

ORDER REDUCING SENTENCE

Before the Court is the motion of defendant for reduction of sentence pursuant to 18 U.S.C. § 3582(c), and defendant’s motion requesting a variance from the revised guideline range (Dkt. # 146).¹ At the original sentencing, the Court imposed a term of 151 months each as to Counts Two and Three, said counts to run concurrent, each with the other, based on application of USSG §2D1.1, which resulted in a total offense level of 34 and a sentencing range of 151 to 188 months. Retroactive Amendment 706, which revises §2D1.1, reduces the base offense level two levels for a total offense level of 32, resulting in an amended guideline range of 121 to 151 months. Because Amendment 706 results in a reduced guideline 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, and the agreement of the parties that defendant’s sentence should be reduced, the Court finds that good cause exists for reduction of defendant’s

¹ The Court also considered defendant’s response to this Court’s order to show cause, wherein counsel for the Public Defender’s Office furthered defendant’s argument for a variance from the Amendment 706-reduced guideline range (Dkt. # 150). The United States, in its response to the order to show cause (Dkt. # 149), offered no objection to a reduction in sentence, provided said reduction is not less than the guideline range as determined by Amendment 706.

sentence within the revised guideline range. Accordingly, defendant's motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c) is **granted**.

In addition to defendant's motion for reduction of sentence based on Amendment 706, defendant moves for a downward variance from the amended guideline range based on post-sentence rehabilitation efforts, to include vocational training while imprisoned. In support of his request for a variance, defendant cites Kimbrough v. United States, 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. These facts and circumstances provide justification for a sentence at the bottom of the revised guideline range, but do not justify a non-guideline sentence.

Defendant also urges the Court to vary downward from the revised guideline range and impose a sentence of 120 months, arguing a variance is justified because the multiple drug offense level was driven primarily by crack cocaine, and the combined weight of the converted substances calculated to the low end of the drug quantity table. Here again, defendant cites Kimbrough and § 3553(a) as authority for further reduction of sentence. Defendant argues for 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 United States 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 United States 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 advisory guideline range.

IT IS THEREFORE ORDERED that defendant's motion for reduction of sentence (Dkt. # 146) is **GRANTED IN PART and DENIED IN PART**. Defendant's request for reduction of sentence is GRANTED, and defendant's request for a downward variance is DENIED.

IT IS FURTHER ORDERED that the terms of imprisonment originally imposed in Counts Two and Three are reduced to 121 months imprisonment as to each count, said counts 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 21st day of July, 2008.



CLAIRE V. EAGAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT