

Court finds that good cause exists for reduction of Defendant's sentence within the revised advisory guideline range. Accordingly, Defendant's motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c) (Dkt. # 229) is **granted**.

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 his conduct while imprisoned and on the continued unfair disparity between cocaine powder and crack cocaine. Defendant cites participation in vocational training, assisting others in obtaining a GED, abstaining from drug use, and good conduct as bases for a downward variance. Although the Court applauds Defendant for his accomplishments while imprisoned, they represent examples of expected behavior and release preparation, and are not sufficient to warrant a non-guideline sentence. In support of his request for a variance, Defendant also cites Kimbrough v. United States, __ U.S.__, 128 S.Ct. 558, 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 more that 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 advisory guideline range.

ACCORDINGLY, Defendant's motion for reduction of sentence (Dkt. # 229) is GRANTED. Defendant's motion for a downward variance (Dkt. # 231) is DENIED. Defendant's request for an evidentiary hearing for consideration of a downward variance is also DENIED. See U.S. v. Legree, 205 F.3d at 729-30 (4th Cir. 2000) (finding that a judge need not hold a hearing on a motion pursuant to 18 U.S.C. § 3582(c)); Restrepo-Contreras v. U.S., No. 96-1411, 1996 WL 636560 (1st Cir. Nov. 4, 1996) (same); U.S. v. Townsend, 98 F.3d 510, 512-13 (9th Cir. 1996)

(concluding district court did not abuse its discretion when it did not hold an evidentiary hearing); see also Fed. R. Crim. P. 43(b)(4) (stating that a defendant's presence is not required in a proceeding that involves the correction or reduction of sentence under 18 U.S.C. § 3582(c)).

IT IS THEREFORE ORDERED that the term of imprisonment originally imposed in Count One is reduced to 292 months imprisonment. The term of imprisonment imposed in Count Three shall remain the same as originally entered, said term to run concurrent with the reduced term imposed in Count One.

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 15th day of July, 2008.


HONORABLE H. DALE COOK
Senior United States District Judge