

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA

vs.

MILTON ROMAN, ET AL.
[EDUARDO MEDINA COLON]

CIVIL NO. 3:06CR268 (PCD)

ORDER RE: MOTION FOR REDUCED SENTENCE

Pending is defendant's (Eduardo Medina Colon) motion for a reduction in sentence based on 18 USC § 3582(a). It is argued that a conflict between 18 USC 3553(a) directing a court to impose a sentence "sufficient but not greater than necessary" and 21 USC § 841(b)(1)(A) which, in circumstances such as defendant's, a sentence of not less than ten years is mandated. Defendant claims the rule of levity despite the upholding of mandatory minimums in Kimbrough v. United States, ___ US ___, 128 S.Ct. At 574. Without citing authority, he also argues that the U.S.S.C. did not consider a court finding a sentence below a mandatory minimum could be "sufficient."

The sentence applied the amended November 2007 guidelines but as that was below the mandatory 10 years, imposed the mandatory minimum. As another statute mandates the minimum, the Commission, and the court, cannot lower a mandatory minimum. USSG § 1B1.10 (comment (n.1(B))). The November 2007 USSG amendment did not overcome the mandatory minimum though it did lower the calculated guideline range.

Accordingly, defendant is not entitled to a sentence reduction since he was sentenced to the mandatory minimum.

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SO ORDERED. Dated at New Haven, Connecticut, March 16, 2009.

/s/ Peter C. Dorsey, SUSD.

Peter C. Dorsey, U.S. District Judge