

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
-vs-	:	NO. 3:06cr268 (PCD)
	:	
HARRY JOHNSON	:	

ORDER

Defendant Johnson renews his claim of a lower offense level on the basis of the U.S.S.G. amendment of November 2007 which would lower his U.S.S.G. calculated offense level by 2.

As a career offender, the defendant was denied the requested relief. That rule has now been reversed by the Court of Appeals, United States v. McGee, 553 F.3d 2251, 2nd Cir. 2009. This defendant is not to be denied the benefit of the two levels provided in that amendment which covers his calculated offense level. His categorization as a career offender has been rejected as it more than doubled his offense level based on conditions more than ten years old.

Thus, as in McGee, the original sentence here was related to a cocaine base range and not a career offender range. The former range was reduced by the November 2007 amendment and its two-level reduction in the guideline range cannot be denied to defendant in view of McGee. This is true notwithstanding the plea agreement which provides background for the sentence eventually imposed but does not alter the legal consideration applied in the sentence imposed.

It follows that had the base offense level been controlled by the Amendment 706, the guideline range would have been two levels lower. The Court will not speculate now what sentence would then have been imposed. By virtue of McGee and the rejection of defendant

being a career offender, the range, reduced by two levels, would be 100-125 months. Applying the 3553(a) factor and considering the U.S.S.G. range, a sentence of 125 months is found to be reasonable and compliant with the 3553(a) factors. The sentence of 151 months is vacated and a sentence of 125 months is imposed in its stead. The prior sentence in all other respects will stand.

Dated at New Haven, Connecticut, this 5th day of May, 2009.

/s/

Hon. Peter C. Dorsey