

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 88-20075</b>
	)	
<b>ABELEEE BRONSON,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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**MEMORANDUM AND ORDER**

Abelee Bronson was convicted by a jury in 1989 of armed robbery, and he was sentenced to 262 months in prison. His case is once again before the court on his Petition Under 18 U.S.C. § 3582(c)(2) for Reduction of Sentence (Doc. 68) and a Motion for Transcripts (Doc. 71). The court previously issued an Order setting a date for a response to be filed by the government and a reply by the movant (Doc. 70). That order is now vacated and, for the reasons set for below, both of these motions are denied.

**1. Motion for Reduction**

Mr. Bronson suggests that his sentence should be reduced pursuant to this court’s authority under 18 U.S.C. § 3582(c), which allows a court to modify a sentence “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . consistent with applicable policy statements issued by the Sentencing Commission.”

18 U.S.C. § 3582(c)(2).

The policy statement to which § 3582(c) refers is § 1B1.10 of the United States Sentencing Guidelines. Section 1B1.10 allows a court to reduce a term of imprisonment under § 3582(c) provided that the guideline range applicable to the defendant was subsequently lowered by one of the specific amendments to the Guidelines listed in § 1B1.10(c). U.S.S.G. § 1B1.10(a)(1).

Mr. Bronson relies on Amendment 709, which modified § 4A1.1 and § 4A1.2 of the sentencing guidelines to change the way certain prior conviction affect a defendant's criminal history category. Mr. Bronson attempts to use Amendment 709 to argue that his sentence should have been imposed concurrently to a previous sentence he had received.

But Amendment 709 is not listed as a specific amendment covered by § 1B1.10, so it does not apply retroactively and thus may not serve as support for a § 3582 reduction in sentence. U.S.S.G. § 1B1.10.

## **2. Motion for Transcripts**

Mr. Bronson also requests a copy of the transcript from his sentencing hearing so that he can prepare a reply to any response from the Government and for any future litigation issues in this case. Under 28 U.S.C. § 753(f), a defendant is entitled to a copy of his transcript if he demonstrates “that his suit is not frivolous and that the transcript is needed to decide the issue presented by the suit.” *Sistrunk v. United States*, 992 F.2d 258, 259 (10th Cir. 1993); *United States v. Williams*, 2006 WL 2692826, at \*2 (D. Kan.

Sept. 19, 2006).

Mr. Bronson's request for a reduced sentence does not raise a nonfrivolous issue, as explained above. And his suggestion that there might be future litigation issues in this case does not satisfy the requirement under § 753(f) because defendant does not have a constitutional right to a transcript for "exploratory use." *Hines v Baker*, 422 F.2d 1002, 1007 (10th Cir. 1970).

**IT IS THEREFORE ORDERED BY THE COURT** that the Order setting deadlines (Doc. 70) is vacated.

**IT IS FURTHER ORDERED** that defendant's Petition Under 18 U.S.C. § 3582(c)(2) for Reduction of Sentence (Doc. 68) is denied.

**IT IS FURTHER ORDERED** that defendant's Motion for Transcripts (Doc. 71) is denied.

**IT IS SO ORDERED** this 29th day of April, 2009.

s/ John W. Lungstrum \_\_\_\_\_  
John W. Lungstrum  
United States District Judge