

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Case No. 04-10151-05-JTM

JOHN WILLIAM COOPER,
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the motion of defendant John William Cooper for modification of his sentence pursuant to 18 U.S.C. § 3582(c). Cooper urges modification of the sentence on the grounds that “he has been a model prisoner and has given every indication of reformation.” (Dkt. No. 286 at 2). Cooper previously pled guilty to Counts 1 and 3 of the Indictment, which alleged respectively a conspiracy to steal insulin and insulin test strips from the military in violation of 18 U.S.C. §§ 371 and 2314 and criminal forfeiture under 18 U.S.C. §§ 918(a)(1)(c), and 28 U.S.C. § 2461. Cooper was sentenced to a term of imprisonment of 30 months on Count 1, and 2 years of supervised release on Count 3.

18 U.S.C. § 3582(c) provides a narrow basis for the modification of a sentence of imprisonment. Under the statute:

The court may not modify a term of imprisonment once it has been imposed except that —

(1) in any case

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment ... if it finds —

(i) that extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years ... (and) is not a danger to the safety of any other person or the community ...

and that such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) 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[.]

Neither of the two statutory conditions for § 3582 relief is present here. The motion before the court has not been made by the Director of the Bureau of Prisons, but by a criminal defendant. Nor does the motion involve a sentence resting on a now-obsolete Sentencing Commission range. Accordingly, the court is without authority to grant the relief sought.

IT IS ACCORDINGLY ORDERED this 16th day of May, 2006 that the defendant's Motion for Modification (Dkt. No. 285) is denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE