

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

United States of America,

Plaintiff,

v.

Case No. 09-20133-09-JWL

Sheldon McIntosh,

Defendant.

MEMORANDUM & ORDER

This matter is before the court on Mr. McIntosh's pro se motions for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) in which Mr. McIntosh asks the court to reduce his sentence based on Amendment 782 to the United States Sentencing Guidelines. The motions are granted to the extent set forth below as Mr. McIntosh is entitled to a one-month reduction in his sentence.

The court sentenced Mr. McIntosh to 67 months' imprisonment after adjusting the sentence by 54 months from a low-end guideline sentence of 121 months to reflect the period of time that Mr. McIntosh had served in Arizona based on the same conduct. *See* U.S.S.G. § 5G1.3(b)(1). In essence, then, Mr. McIntosh received a low-end guideline sentence of 121 months with an offset for time already served in state custody. While Mr. McIntosh is eligible for a two-level reduction in his base offense level, he remains subject to the mandatory minimum sentence of 120 months pursuant to 21 U.S.C. §§ 841(b)(1)(A).¹ Thus, the court is

¹ Mr. McIntosh received a low-end guideline sentence of 121 months consistent with the guideline range for imprisonment based on a total offense level of 32 and a criminal history

only authorized to grant Mr. McIntosh a one-month reduction, from 121 months to 120 months. The statutory mandatory minimum precludes the court from sentencing Mr. McIntosh to less than 120 months. *United States v. Randle*, 508 Fed. Appx. 766, 768 (10th Cir. 2013) (on § 3582(c) motion, district court has no authority or discretion to depart from a statutorily mandated minimum sentence).

IT IS THEREFORE ORDERED BY THE COURT THAT Mr. McIntosh's motions for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) (docs. 1724 and 1740) are **granted as described herein** and Mr. McIntosh's sentence is **reduced from 67 months to 66 months imprisonment**. All other provisions of the judgment dated November 1, 2011 shall remain in effect.

IT IS SO ORDERED.

Dated this 4th day of March, 2015, at Kansas City, Kansas.

Effective Date: November 1, 2015.

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

category of I. Amendment 782 would reduce Mr. McIntosh's offense level to 30, warranting an amended guideline range of 97 to 121 months.