

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
)	
)	
v.)	CRIMINAL No. 01-101-P-H
)	
JEFFREY D. STEARNS,)	
)	
DEFENDANT)	

**ORDER ON DEFENDANT’S MOTION
TO REDUCE SENTENCE**

This defendant moves for a reduction of sentence under 18 U.S.C. § 3582(c)(2).

His first two arguments are based upon a change in the Guideline for calculating criminal history in the case of prior sentences imposed on the same day. Guideline Amendment 709 went into effect on November 1, 2007. The defendant was sentenced in 2002. Unfortunately for this defendant, the Commission did not make Amendment 709 retroactive. See Guideline § 1B1.10(c) (listing retroactive amendments and not including Amendment 709). Guideline § 1B1.10(b)(1) makes clear that the court cannot make a reduction under 18 U.S.C. § 3582(c)(2) on account of a Guideline amendment if the Commission has not made the amendment retroactive. The First Circuit has confirmed this requirement in United States v. Godin, 522 F.3d 133, 135 (1st Cir. 2008).

The defendant's third argument is based upon educational progress the defendant has made while in prison. While I commend the defendant for his progress, it, too, is not a ground for reducing his sentence.

Accordingly, the motion to reduce sentence is **DENIED**.

SO ORDERED.

DATED THIS 24TH DAY OF JULY, 2008

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

**U.S. DISTRICT COURT
DISTRICT OF MAINE (PORTLAND)
CRIMINAL DOCKET FOR CASE #: 2:01CR101 (DBH)**

United States of America

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v.

Jeffrey D. Stearns,

Defendant

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