

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted May 20, 2009

Decided May 27, 2009

Before

RICHARD A. POSNER, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 06-3890

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

COLLINS BRUMFIELD,
Defendant-Appellee.

Appeal from the United States District
Court for the Western District of
Wisconsin.

No. 06-CR-100-S-01

John C. Shabaz,
Judge.

ORDER

Collins Brumfield pleaded guilty to distributing crack cocaine, *see* 21 U.S.C. § 841(a)(1), and was sentenced to the top of the guidelines range, 235 months' imprisonment. Because his appeal was pending when the Supreme Court decided *Kimbrough v. United States*, 128 S. Ct. 558 (2007), we remanded Brumfield's sentence to the district court for the limited purpose of permitting the sentencing judge to advise this court whether he was inclined to resentence Brumfield in light of *Kimbrough*. However, we instructed the sentencing judge to hold off telling the court whether he was inclined to resentence the defendant under *Kimbrough* until he decided whether to act favorably on a motion to reduce the defendant's sentence under the new guidelines range, U.S.S.G. § 1B1.10(b)(2)(A).

Chief Judge Crabb, who is currently the only judge in the Western District of Wisconsin due to Judge Shabaz's medical leave, appropriately responded in place of Judge Shabaz. See *United States v. Howe*, 310 Fed. Appx. 43, 45 (7th Cir. 2009) (unpublished order). Chief Judge Crabb announced that she intends to lower Brumfield's offense level to comport with the amended crack guidelines—Brumfield's new guidelines range would be 151 to 188 months—and also that she is inclined to impose a yet lower sentence, pursuant to *Kimbrough*, based on the remaining disparity between the crack and powder cocaine sentencing guidelines. Brumfield requests a remand for resentencing; the government has not responded.

Accordingly, **IT IS ORDERED** that Brumfield's sentence is **VACATED**, and the case is **REMANDED** to the district court for resentencing.