

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-4170

United States of America,	*
	*
Appellee,	*
	* Appeal from the United States
v.	* District Court for the
	* Western District of Missouri.
Antonio L. McGee, also known as	*
Tonio	* [UNPUBLISHED]
	*
Appellant.	*

Submitted: February 20, 2008
Filed: January 9, 2009

Before MURPHY, BYE, and MELLOY, Circuit Judges.

PER CURIAM.

Antonio McGee appealed the sentence the district court¹ imposed after he pleaded guilty to conspiracy to possess with intent to distribute more than 50 grams of crack cocaine in violation of 21 U.S.C. § 846. We affirmed. United States v. McGee, No. 05-4170 (8th Cir. Jan. 8, 2007). The Supreme Court granted certiorari, vacated the judgment of this Court, and remanded for further consideration in light of

¹The Honorable Ortrie D. Smith, United States District Judge for the Western District of Missouri.

Kimbrough v. United States, 128 S. Ct. 558 (2007). McGee v. United States, No. 06-10523 (U.S. Jan. 14, 2008).

Because McGee clearly asked for a below-Guidelines sentence based upon the crack-powder cocaine sentencing disparity and his request was denied because the district court believed it had no authority to so do, we hereby reverse the district court and remand for resentencing in light of Kimbrough.
