[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-12129

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDGAR JAMAL GAMORY,
a.k.a. J.B.,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:08-cr-00153-TWT-RGV-1

Before ROSENBAUM, LUCK, and EDMONDSON, Circuit Judges.

PER CURIAM:

Edgar Gamory, through counsel, appeals the district court's denial of his motion for a sentence reduction, pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 782 to the Sentencing Guidelines. No reversible error has been shown; we affirm.

I.

In 2008, Gamory was convicted of conspiracy to distribute and to possess with intent to distribute cocaine and marijuana: a violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(ii), (vii), and 846 (Count One).[1]

A probation officer prepared a Presentence Investigation Report ("PSI") using the 2008 Sentencing Guidelines. According to the PSI, Gamory's drug offense involved more than 150 kilograms of cocaine: an amount that corresponded to a base-offense level of 38 under U.S.S.G. § 2D1.1(c)(1). Gamory's total offense level of 44 and his criminal history category of II resulted in a guidelines range of life imprisonment.

[1] Gamory was also convicted of two counts of money laundering, in violation of 18 U.S.C. §§ 1957 and 2 (Counts Two and Three). Gamory's sentence on Counts Two and Three is not at issue in this appeal.

Gamory filed objections to the PSI. The sentencing court overruled Gamory's objection to the PSI's drug-quantity finding. The sentencing court found that a confidential informant and Gamory's drug supplier testified credibly about the amount of drugs involved in Gamory's offense. Based chiefly on this witness testimony, the sentencing court found it "absolutely clear" that Gamory was a "large-scale dealer in cocaine and marijuana" who was "involved with the sale and distribution of hundreds of kilograms of cocaine." Because "no doubt" existed that Gamory's drug-conspiracy offense "involved more than 150 kilograms of cocaine," the sentencing court determined that Gamory qualified for a base-offense level of 38.

The sentencing court calculated Gamory's guidelines range as life imprisonment and then imposed a life sentence. We affirmed Gamory's convictions and sentence on direct appeal. *See United States v. Gamory*, 635 F.3d 480, 497 (11th Cir. 2011).

In October 2020, Gamory moved for a reduced sentence based on Amendment 782 to the Sentencing Guidelines: an amendment that lowered by two levels the base-offense level for controlled-substance offenses. The district court denied Gamory's motion. The district court examined the record that was before the court at the time of Gamory's initial sentencing and concluded that Gamory's guideline range calculation remained the same under the amended guidelines. The district court noted that it had credited witness testimony about various drug transactions involving Gamory, including testimony establishing that Gamory was

involved with over 800 kilograms of cocaine. Because the record established that Gamory was responsible for an amount of cocaine "far in excess of 450 kilograms," the district court determined that Gamory's base-offense level remained 38. The district court thus lacked authority to reduce Gamory's sentence. The district court also rejected Gamory's constitutional challenges to his sentence. This appeal followed.

II.

We review *de novo* whether a district court had authority to modify a term of imprisonment. *See United States v. Jones*, 962 F.3d 1290, 1296 (11th Cir. 2020).

A district court ordinarily may not modify a defendant's term of imprisonment once it has been imposed. *See* 18 U.S.C. § 3582(c). A district court may, however, reduce a defendant's sentence if the term of imprisonment was "based on a sentencing range that has subsequently been lowered by the Sentencing Commission." *Id.* § 3582(c)(2); *see also* U.S.S.G. § 1B1.10(a)(1). A district court "cannot use an amendment to reduce a sentence in a particular case unless that amendment actually lowers the guidelines range in that case." *United States v. Hamilton*, 715 F.3d 328, 337 (11th Cir. 2013). The defendant "bears the burden of establishing that a retroactive amendment has actually lowered his guidelines range." *Id.*

In determining whether the defendant's guidelines range has been lowered, the district court calculates the guideline range that

would have applied if the amendment were in effect at the time of the initial sentencing but leaves all other guideline application decisions undisturbed. *Dillon v. United States*, 560 U.S. 817, 827 (2010). A section 3582(c)(2) proceeding does not constitute a *de novo* resentencing. *See id.* at 831; U.S.S.G. § 1B1.10(a)(3).

Amendment 782 lowered retroactively the sentencing range applicable to controlled-substance offenses by revising the drug-quantity tables listed in U.S.S.G. § 2D1.1(c). *See* U.S.S.G. App. C., Amend. 782. When Gamory was sentenced in 2008, the Sentencing Guidelines assigned a base-offense level of 38 to controlled-substance offenses involving 150 kilograms or more of cocaine. *See* U.S.S.G. § 2D1.1(c) (2008). Following Amendment 782, the amount of cocaine necessary to trigger a base-offense level of 38 increased to 450 kilograms or more. *See* U.S.S.G. § 2D1.1(c) (2014). Thus, to show that Amendment 782 actually lowered his guidelines range, Gamory had to prove that his drug-conspiracy offense involved less than 450 kilograms of cocaine.

To determine the applicable drug-quantity amount for purposes of ruling on a section 3582(c) motion, we have instructed district courts to "determine what drug quantity findings it made, either explicitly or implicitly, at [the defendant]'s original sentencing hearing" without entering "any new finding that is inconsistent with a finding it made in the original sentence proceeding." *See Hamilton*, 715 F.3d at 340. "Once [the district court] makes a drug quantity finding that is not inconsistent with any finding it made in the original sentence proceeding, the district court can then use

that finding to calculate a new guidelines range" under the pertinent guidelines amendment. *Id.*

The district court committed no error in concluding that Gamory's guidelines range remained unchanged following Amendment 782. The district court followed properly the procedure described in *Hamilton*.[2] To determine whether Gamory was responsible for at least 450 kilograms of cocaine (the drug quantity necessary to trigger a base-offense level of 38 under Amendment 782) the district court considered the record available at the time of Gamory's initial sentencing. The district court determined that this pre-existing record established that Gamory was responsible for more than 450 kilograms of cocaine: a drug-quantity finding consistent with the sentencing court's initial finding that Gamory was responsible for more than 150 kilograms. Based on this drug-quantity finding, the district court concluded properly that Gamory was still subject to a base-offense level of 38 under the amended

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[2] On appeal, Gamory argues that the drug-quantity assessment described in *Hamilton* is inapplicable here because the sentencing court used the phrase "more than" 150 kilograms: a phrase Gamory contends is more specific than the "at least" language used in *Hamilton*. In context, we understand both phrases to mean at the lowest estimate and that higher numbers might be correct. For this appeal, we see no material difference between these two phrases. *Cf. United States v. Green*, 764 F.3d 1352, 1353, 1356 (11th Cir. 2014) (concluding that the district court applied properly the process described in *Hamilton* when the sentencing court found the defendant responsible for a drug-quantity amount "well in excess of" and "far above" the triggering amount of cocaine).

guidelines and, thus, that the district court lacked authority to reduce Gamory's sentence.

On appeal, Gamory challenges the credibility of the two witnesses who testified about the quantity of drugs involved in Gamory's offense. The district court, however, found these two witnesses credible. The district court's "choice of whom to believe is conclusive on the appellate court unless the judge credits *exceedingly* improbable testimony," or its credibility determination is "contrary to the laws of nature, or is so inconsistent or improbable on its face that no reasonable factfinder could accept it." *United States v. Ramirez-Chilel*, 289 F.3d 744, 749 (11th Cir. 2002) (emphasis in original). Here, the complained-of witness testimony was neither "contrary to the laws of nature" nor so inconsistent or improbable that it was unworthy of credence. Accordingly, we must defer to the district court's credibility finding.

We also reject Gamory's argument that this Court's statement on direct appeal -- noting that the sentencing court found Gamory "was involved with more than 150 kilograms of cocaine" -- constituted the law-of-the-case or otherwise foreclosed the district court from making additional drug-quantity findings in ruling on Gamory's section 3582 motion. Our recitation of the pertinent facts of the case on direct appeal constituted no binding factual finding about the quantity of drugs involved in Gamory's offense. Nor is a drug-quantity finding of "more than 150 kilograms" inconsistent with the district court's later finding that Gamory was responsible for more than 450 kilograms of cocaine.

On appeal, Gamory seeks to challenge the constitutionality of his original sentence under *Apprendi v. New Jersey*, 530 U.S. 46 (2000). Gamory also seeks to challenge the constitutionality of U.S.S.G. § 1B1.10(b)(2)(A) as applied to him. These constitutional challenges to Gamory's sentence are outside the scope of the district court's authority under section 3582(c)(2). *See United States v. Bravo*, 203 F.3d 778, 782 (11th Cir. 2000) (concluding that section 3582(c) does not authorize the district court to consider "extraneous resentencing issues"; a defendant seeking to challenge the constitutionality of his sentence must raise that argument in a 28 U.S.C. § 2255 proceeding). The district court lacked jurisdiction to consider these issues; we need not address these arguments on appeal. We also note that we have already rejected Gamory's *Apprendi* argument on direct appeal. *See Gamory*, 635 F.3d at 489 n.12; *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289, 1291-92 (11th Cir. 2005) ("Under the law-of-the-case doctrine, the resolution of an issue decided at one stage of a case is binding at later stages of the same case." (alteration omitted)).

AFFIRMED.