

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

EDDIE HOUSTON, JR.,
Defendant-Appellant.

No. 20-10043

D.C. No.
2:07-cr-00109-TLN-1

ORDER

Filed November 20, 2020

Before: Jay S. Bybee and Lawrence J. VanDyke, Circuit
Judges, and Vince Chhabria,* District Judge.

Order;
Dissent by Judge Chhabria

* The Honorable Vince Chhabria, United States District Judge for the Northern District of California, sitting by designation.

SUMMARY**

Criminal Law

The panel denied a petition for panel rehearing and denied on behalf of the court a petition for rehearing en banc.

Dissenting from the denial of the petition for panel rehearing, District Judge Chhabria wrote that he would grant rehearing, vacate the memorandum disposition, and schedule oral argument (which the panel previously concluded was unnecessary) because of the possibility that the panel erred in resting its ruling on the conclusion that the district court was not required to consider the sentencing factors in connection with the motion to reduce the sentence.

COUNSEL

Heather E. Williams, Federal Defender; David M. Porter, Assistant Federal Defender; Office of the Federal Public Defender, Sacramento, California; for Defendant-Appellant.

McGregor W. Scott, United States Attorney; Camil A. Skipper, Appellate Chief; Jason Hitt, Assistant United States Attorney; United States Attorney's Office, Sacramento, California; for Plaintiff-Appellee.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

ORDER

Judges Bybee and VanDyke vote to deny and Judge Chhabria would grant the petition for panel rehearing. Judge VanDyke votes to deny and Judge Bybee recommends denial of the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petitions for rehearing and rehearing en banc are therefore **DENIED**.

CHHABRIA, District Judge, dissenting from the denial of the petition for panel rehearing:

I would grant rehearing, vacate our memorandum disposition, and schedule oral argument (which we previously concluded was unnecessary) because of the possibility that we erred in resting our ruling on the conclusion that the district court was not required to consider the sentencing factors in connection with the motion to reduce the defendant's sentence. *See United States v. Easter*, No. 19-2587, 2020 WL 5525395 (3rd Cir. Sep. 15, 2020); *United States v. Chambers*, 956 F.3d 667 (4th Cir. 2020); *United States v. Smith*, 959 F.3d 701 (6th Cir. 2020). *See also United States v. Kelley*, 962 F.3d 470, 478 (9th Cir. 2020) (holding that a plenary resentencing proceeding is not required in this context but contemplating that the district court will consider the statutory sentencing factors in deciding whether the reduction is warranted). *But see United States v. Moore*, 963 F.3d 725 (8th Cir. 2020); *United States v. Mannie*, No. 19-6102, 2020 WL 4810084 (10th Cir. 2020); *United States v. Shaw*, 957 F.3d 734 (7th Cir. 2020).