

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

September 29, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TYRONE RAMSEY,

Defendant - Appellant.

No. 21-3073
(D.C. No. 2:09-CR-20046-JAR-9)
(D. Kan.)

ORDER AND JUDGMENT*

Before **MORITZ, BALDOCK**, and **EID**, Circuit Judges.

Tyrone Ramsey, proceeding pro se,¹ appeals the district court’s order refusing to reconsider an earlier order denying a sentence reduction under 18 U.S.C.

§ 3582(c)(2). For the reasons explained below, we affirm.

In 2012, Ramsey pleaded guilty to conspiring to distribute and possess with intent to distribute heroin, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B), and 21

* After examining the brief and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

¹ We construe Ramsey’s pro se brief liberally, “but we do not act as his advocate.” *United States v. Griffith*, 928 F.3d 855, 864 n.1 (10th Cir. 2019).

U.S.C. § 846. The presentence investigation report determined that Ramsey’s base offense level was 38 because two individuals died after ingesting substances obtained from this drug conspiracy. *See* U.S.S.G. § 2D1.1(a)(2) (setting base offense level of 38 for convictions under § 841(b)(1)(B) when “death or serious bodily injury resulted from the use of the substance”). The report also added two levels for firearm possession and subtracted three for acceptance of responsibility, resulting in a total offense level of 37. *See* § 2D1.1(b)(1); U.S.S.G. § 3E1.1. With Ramsey’s criminal-history category III, his sentencing range under the United States Sentencing Guidelines was 262 to 327 months. *See* U.S.S.G. ch. 5 (setting out table of Guidelines sentencing ranges). On the government’s substantial-assistance motion, the district court sentenced Ramsey to 188 months in prison, followed by four years of supervised release.

In May 2015, Ramsey moved to reduce his sentence under § 3582(c)(2), which allows a district court, “after considering the factors set forth in [18 U.S.C. §] 3553(a) to the extent that they are applicable,” to reduce a defendant’s sentence based on a subsequently lowered Guidelines range. In support, Ramsey relied on Amendment 782, which “reduced the base offense levels assigned to drug quantities in [§ 2D1.1(c)], effectively lowering the Guidelines minimum sentences for [certain] drug offenses.” *United States v. Kurtz*, 819 F.3d 1230, 1234 (10th Cir. 2016) (quoting *United States v. Goodwin*, 635 F. App’x 490, 493 (10th Cir. 2015) (unpublished)).

The district court denied relief because Ramsey’s base offense level of 38 was not based on the drug quantities in § 2D1.1(c) that were lowered by Amendment 782.

Instead, Ramsey’s base offense level came from “§ 2D1.1(a)(2), based upon deaths resulting from the use of the substance involved.” R. vol. 1, 62. Thus, the district court reasoned, “Amendment 782 d[id] not have the effect of lowering [Ramsey’s] [G]uideline[s] range, and [he was] ineligible for any further sentence reduction” under § 3582(c)(2). *Id.*

Over five years later, in November 2020, Ramsey filed a motion asking the district court to reconsider its prior § 3582(c)(2) ruling.² The district court denied relief for two independent reasons. First, it noted that motions for reconsideration of nondispositive orders must be filed within 14 days of the original order. *See* D. Kan. Rule 7.3(b); *United States v. Randall*, 666 F.3d 1238, 1242 (10th Cir. 2011) (holding that motion to reconsider “the denial of a § 3582(c)(2) motion must be brought within the time for appeal”). And because Ramsey’s motion was filed over five years after the original order, the district court denied it as untimely. Second, the district court reaffirmed the rationale in the original denial, noting that Ramsey did not qualify for a sentence reduction under § 3582(c)(2) and Amendment 782.

Ramsey now appeals, arguing again that he is entitled to a reduced sentence under § 3582(c)(2) and Amendment 782. But his appellate brief contains no challenge to the district court’s conclusion that his motion to reconsider—filed over five years after the district court’s original ruling—was untimely. He has therefore

² Earlier in 2020, Ramsey filed a motion for compassionate release under § 3582(c)(1)(A)(i). The district court denied this motion, as well as Ramsey’s later motions for reconsideration and to amend the compassionate-release motion. Those rulings are not at issue in this appeal.

waived any such challenge. *See United States v. Cooper*, 654 F.3d 1104, 1128 (10th Cir. 2011). And because untimeliness is a sufficient reason to affirm the district court's order, we need not reach the argument that Ramsey does make. *See Bones v. Honeywell Int'l, Inc.*, 366 F.3d 869, 877 (10th Cir. 2004) (declining to address argument because "even if [appellant] were to prevail on that issue," district court's order would "stand on the alternative ground which was not appealed").

In any event, were we to consider Ramsey's argument that Amendment 782 applies here, we would reject it for the reasons identified by the district court. *See United States v. Riddle*, 731 F. App'x 771, 778 (10th Cir. 2018) (unpublished) (noting that "we could decline to address" argument because defendant failed to challenge alternative basis for district court's ruling but also rejecting that argument on its merits). Amendment 782 does not apply to Ramsey because his base offense level was calculated based on § 2D1.1(a)(2), not on the drug quantities listed in § 2D1.1(c) and lowered by Amendment 782. He is therefore not entitled to a sentence reduction under § 3582(c)(2) or to relief on his motion for reconsideration. Accordingly, we affirm.

As a final matter, we grant Ramsey's motion to proceed in forma pauperis.

Entered for the Court

Nancy L. Moritz
Circuit Judge