[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 13-12897 Non-Argument Calendar

D.C. Docket No. 1:92-cr-00571-DTKH-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO HIDALGO, a.k.a. Pedro Hildago, a.k.a. Peter Hildalgo, a.k.a. Pedro Alvarez-Hidalgo, a.k.a. Pedro Joaquin Hidalgo-Alvarez, a.k.a. Petey, a.k.a. El Flaco, a.k.a. Pedro Alvarez,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

(March 7, 2014)

Before TJOFLAT, MARTIN, and JORDAN, Circuit Judges.

PER CURIAM:

Pedro Hidalgo appeals the district court's denial of his motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2). On appeal, Hidalgo argues that Amendment 591 of the United States Sentencing Guidelines (USSG) applies retroactively to his sentence and requires that he be resentenced under USSG § 2X1.1, which would result in a three-level reduction in his total offense level. After careful review, we affirm.

I.

On April 28, 1995, a federal grand jury sitting in the Southern District of Florida returned an indictment charging Hidalgo with a variety of drug trafficking and firearms offenses relating to his participation in a scheme to import cocaine into the United States. After a jury trial, Hidalgo was convicted of (1) conspiracy to import cocaine, in violation of 21 U.S.C. §§ 952(a) and 963 (Count 1); (2) conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846 (Count 2); (3) importation of cocaine, in violation of 21 U.S.C. § 952(a) (Count 3); (4) attempt to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846 (Count 4); (5) use of a firearm in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (Count 7); and (6) receipt of firearms while under indictment, in violation of 18 U.S.C. § 922(n) (Count 9).

The presentence investigation report applied the 1994 Guideline Manual to calculate Hidalgo's guideline range. For Counts 1–4, the base offense level was 38, pursuant to USSG § 2D1.1. After factoring in various enhancements, the district court found that the final offense level was 43. As a result, Hidalgo was sentenced to life imprisonment for each of these four counts.

On April 29, 2013, Hidalgo filed a motion to reduce his sentence pursuant to 18 U.S.C. § 3582, which the district court denied. Hidalgo now appeals.

II.

We review the denial of a motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) for abuse of discretion. <u>United States v. Jules</u>, 595 F.3d 1239, 1241 (11th Cir. 2010). "A district court by definition abuses its discretion when it makes an error of law." <u>Koon v. United States</u>, 518 U.S. 81, 100, 116 S. Ct. 2035, 2047 (1996).

Hidalgo argues that he is entitled to a reduction of his sentence because Amendment 591 instructs courts to apply USSG § 2X1.1 for offenses that involve an attempt or a conspiracy. If the district court had applied § 2X1.1(b) at his original sentencing, Hidalgo argues that he would have received a three-level

3

decrease in his total offense level. According to Hidalgo, this three-level decrease would have correlated to a guideline range of 292–365 months of imprisonment.

Amendment 591 offers no help to Hidalgo because § 2X1.1 does not apply to his sentence. It is true that Amendment 591 instructs courts to "refer" to § 2X1.1 (in addition to the substantive offense guideline) if the offense generally involved a conspiracy, attempt, or solicitation. USSG, App. C, amend. 591. However, § 2X1.1 does not apply when the attempt, solicitation, or conspiracy is expressly covered by another offense guideline section. USSG § 2X1.1(c) ("When an attempt, solicitation, or conspiracy is expressly covered by another offense guideline section, apply that guideline section."). Section 2D1.1 is an example of such a guideline section that expressly covers both the substantive offense as well as attempts and conspiracies. See USSG § 2X1.1, comment. (n.1) (noting that § 2D1.1 expressly covers attempts and conspiracies). As a result, were Hidalgo to be resentenced, § 2X1.1 would not apply. Instead, Hidalgo's base offense level would remain the same because § 2D1.1 would still exclusively govern.

III.

For the reasons stated above, the district court did not abuse its discretion by denying Hidalgo's motion to reduce his sentence.

AFFIRMED.

4