

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2008

(Argued: May 11, 2009

Decided: August 27, 2009)

Docket No. 08-4088-cr

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UNITED STATES OF AMERICA,

Appellee,

-- v. --

CHRISTOPHER MAIN,

Defendant-Appellant.
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B e f o r e : WALKER and WALLACE,* Circuit Judges.**

1 Defendant-Appellant Christopher Main appeals from an order
2 of the United States District Court for the District of Vermont
3 (Murtha, J.) denying his motion for a reduction of sentence
4 pursuant to 18 U.S.C. § 3582(c) (2) and United States Sentencing
5 Guidelines § 1B1.10, pursuant to which the sentencing ranges
6 applicable to crack cocaine offenses were retroactively reduced.

* The Honorable J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

** The Honorable Sonia Sotomayor, originally a member of the panel, was elevated to the Supreme Court on August 8, 2009. The two remaining members of the panel, who are in agreement, have determined the matter. See 28 U.S.C. § 46(d); Local Rule 0.14(2); United States v. Desimone, 140 F.3d 457 (2d Cir. 1998).

1 Main had pled guilty under a plea agreement pursuant to Federal
2 Rule of Criminal Procedure 11(c)(1)(C).

3 We AFFIRM the district court's judgment.

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5 PAUL VAN DE GRAAF, Acting United
6 States Attorney (William B. Darrow
7 & Gregory L. Waples, Assistant
8 United States Attorneys, on the
9 brief), District of Vermont,
10 Burlington, VT, for Appellee.

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12 ELIZABETH D. MANN, Assistant
13 Federal Public Defender, for
14 Michael L. DeSautels, Federal
15 Public Defender, Burlington, VT,
16 for Defendant-Appellant.

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18 JOHN M. WALKER, JR., Circuit Judge:

19 Defendant-Appellant Christopher Main appeals from a July 9,
20 2008 order of the United States District Court for the District
21 of Vermont (Murtha, J.) denying his motion for a reduction of
22 sentence pursuant to 18 U.S.C. § 3582(c)(2) and United States
23 Sentencing Guidelines ("U.S.S.G.") § 1B1.10, pursuant to which
24 the sentencing ranges applicable to crack cocaine offenses were
25 retroactively reduced. We hold that the district court was
26 without authority to reduce Main's sentence under section 3582(c)
27 because the sentence was dictated by his plea agreement pursuant
28 to Federal Rule of Criminal Procedure 11(c)(1)(C), and not the
29 Guidelines related to crack cocaine. Accordingly, we affirm the
30 district court's denial of Main's motion.

31 **BACKGROUND**

32 The facts of Main's crime are set forth fully in our prior

1 published decision vacating Main's first judgment of conviction
2 and sentence because the district court had inaccurately
3 described the range of penalties to which Main could be subjected
4 as a result of his guilty plea. See United States v. Harrington,
5 354 F.3d 178, 180-86 (2d Cir. 2004).

6 On remand, Main again pled guilty, pursuant to a plea
7 agreement, to distributing and conspiring to distribute five or
8 more grams of crack cocaine in violation of 21 U.S.C. §§
9 841(a)(1) and 846. The agreement specified that Main and the
10 government had agreed, "pursuant to Federal Rule of Criminal
11 Procedure 11(c)(1)(C),"¹ that "the appropriate sentence to be
12 imposed, with regard to imprisonment, is a term of not more than
13 eight (8) years." (Plea Agreement ¶ 3.) The agreement further
14 stated that Main "reserve[d] the right to argue for a downward
15 departure." (Plea Agreement ¶ 3.) The district court accepted

¹ Rule 11(c)(1) provides:

An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. . . . If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will . . . (C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

1 Main's guilty plea.

2 At the subsequent sentencing hearing in February 2005, the
3 district court determined that Main's total offense level was 26,
4 that his Criminal History Category was VI, and that the
5 applicable Guideline range therefore was 120 to 150 months, and
6 found that "the parties have agreed in accordance with [Rule
7 11(c)(1)(C)] that the appropriate sentence to be imposed is a
8 term of imprisonment of not more than eight years[,] which is 96
9 months." (Sentencing Tr. 28:24-29:2, Feb. 23, 2005.) The
10 district court then granted Main's request for downward
11 departures, reducing Main's sentence by seven months for
12 "extraordinary rehabilitation . . . while in prison" and by five
13 months for certain time Main served. (Sentencing Tr. 30:24-
14 31:10.) The district court sentenced Main to 84 months'
15 imprisonment.

16 On May 14, 2008, Main moved to reduce his sentence pursuant
17 to section 3582(c)(2), which allows such motions by any
18 "defendant who has been sentenced to a term of imprisonment based
19 on a sentencing range that has subsequently been lowered by the
20 Sentencing Commission." 18 U.S.C. § 3582(c)(2). Main argued
21 that he was eligible for a reduced sentence under U.S.S.G. §
22 1B1.10, effective March 3, 2008, which retroactively reduced by
23 two levels the base offense level for crack cocaine offenses
24 covered by U.S.S.G. § 2D1.1. See U.S.S.G. supp. to app. C,
25 amend. 706 (2007) (amending the drug quantity table for U.S.S.G.

1 § 2D1.1); U.S.S.G. supp. to app. C, amend. 713 (2007)
2 (retroactively applying § 2D1.1). The district court denied
3 Main's motion on the basis that the court lacked authority to
4 modify the sentence under section 3582(c)(2), because Main had
5 been sentenced pursuant to a Rule 11(c)(1)(C) plea agreement and
6 not pursuant to U.S.S.G. § 2D1.1. After granting Main's motion
7 to reconsider the denial of resentencing, the district court
8 affirmed its decision. This appeal followed.

9 DISCUSSION

10 The only issue on appeal is whether Main is eligible for a
11 reduction in sentence under the crack cocaine amendments,
12 pursuant to section 3582(c)(2). We review de novo the
13 determination of whether his sentence was "based on a sentencing
14 range that was subsequently lowered by the Sentencing
15 Commission," because this determination is a matter of statutory
16 interpretation. United States v. Williams, 551 F.3d 182, 185 (2d
17 Cir. 2009).

18 Section 3582(c) limits a district court's resentencing
19 authority by providing that it "may not modify a term of
20 imprisonment once it has been imposed," except in limited
21 circumstances, such as when the defendant was sentenced "based on
22 a sentencing range that has subsequently been lowered by the
23 Sentencing Commission." 18 U.S.C. § 3582(c)(2). Although Main
24 contends that he was sentenced pursuant to the Guidelines section

1 applicable to crack cocaine offenses, U.S.S.G. § 2D1.1, for which
2 the Sentencing Commission lowered the base offense level, see id.
3 at supp. to app. C, amends. 706, 713 (2007), we agree with the
4 district court that Main in fact was sentenced “based on” his
5 Rule 11(c)(1)(C) plea agreement.

6 Not only did the district court expressly “accept[] the plea
7 agreement, including the factors to be considered in imposing the
8 sentence,” (Sentencing Tr. 29:3-5), but also, despite calculating
9 the then-applicable Guidelines range to be 120 to 150 months’
10 imprisonment, the district court did not adhere to that range
11 because it was higher than the maximum sentence of 96 months
12 specified in Main’s plea agreement. Under Rule 11(c)(1)(C), a
13 district court may not deviate from the “specific sentence or
14 sentencing range,” Fed. R. Crim. P. 11(c)(1)(C), recommended or
15 requested by the accepted plea agreement. See, e.g., United
16 States v. Williams, 260 F.3d 160, 165 (2d Cir. 2001) (“[A]
17 district court may accept or reject a Rule 11(e)(1)(C)² sentence
18 bargain, but may in no event modify it.”). Instead of using the
19 sentencing range specified by the Guidelines, the district court
20 adhered to the maximum sentence permitted by the plea agreement
21 and, after granting two reductions totaling twelve months,
22 sentenced Main to 84 months’ imprisonment. We therefore hold

² Federal Rule of Criminal Procedure 11(e)(1)(C) is Rule 11(c)(1)(C)’s predecessor, and was revised and renumbered in 2002 with only stylistic changes. Fed. R. Crim. P. 11 advisory committee’s notes.

1 that Main's sentence was "based on" his Rule 11(c)(1)(C)
2 agreement with the government, and not a sentencing range that
3 the Sentencing Commission subsequently lowered, and conclude that
4 the district court was without authority to reduce the sentence
5 pursuant to 18 U.S.C. § 3582(c)(2).

6 Other circuits that have considered this question generally
7 have reached similar conclusions, reasoning that a sentence
8 imposed pursuant to a Rule 11(c)(1)(C) agreement "arises directly
9 from the agreement itself, not from the Guidelines, even though
10 the court can and should consult the Guidelines in deciding
11 whether to accept the plea." United States v. Cieslowski, 410
12 F.3d 353, 364 (7th Cir. 2005); see also, e.g., United States v.
13 Sanchez, 562 F.3d 275, 277-79 (3d Cir. 2009) (holding that a
14 defendant sentenced pursuant to a Rule 11(c)(1)(C) plea agreement
15 is ineligible for section 3582(c)(2) relief); United States v.
16 Scurlark, 560 F.3d 839, 841 (8th Cir. 2009) (same); United States
17 v. Peveler, 359 F.3d 369, 377-79 (6th Cir. 2004) (same); United
18 States v. Trujeque, 100 F.3d 869, 870-71 (10th Cir. 1996) (same).

19 In contrast, the Fourth Circuit held in United States v.
20 Dews, 551 F.3d 204, 208-12 (4th Cir. 2008), reh'g en banc granted
21 (4th Cir. 2009), appeal dismissed as moot (4th Cir. 2009), that
22 section 3582(c)(2) authorized district courts to resentence
23 defendants who pled guilty pursuant to Rule 11(c)(1)(C) plea
24 agreements. The Fourth Circuit, however, subsequently vacated
25 its decision in Dews by granting a rehearing en banc, see 4th

1 Cir. Local Rule 35(c), and has since dismissed the appeal as
2 moot. Because Dews is no longer good law, we have no need to
3 address Main's argument that, for the reasons provided in Dews,
4 he is eligible for a sentencing reduction under section
5 3582(c)(2).

6 Main points out that his case may be distinguished from
7 cases such as Peveler, see 359 F.3d at 372-73, in which the plea
8 agreements stipulated a specific offense level or Guidelines
9 range to be applied: Because Main's plea agreement merely
10 specified the upper limit of the sentencing range to which he
11 could be exposed (96 months), and did not limit the court's
12 discretion to sentence Main to any term below that limit, Main
13 argues that a sentencing reduction pursuant to section 3582(c)(2)
14 would not have violated Rule 11(c)(1)(C). But our decision that
15 Main is ineligible for resentencing depends upon the text of
16 section 3582(c)(2), which states that a reduction must be a
17 sentence "based on a sentencing range that has not been
18 subsequently lowered by the Sentencing Commission," and not upon
19 Rule 11(c)(1)(C), and we need not address whether the latter
20 should be construed in other cases to bar resentencing pursuant
21 to section 3582(c)(2). Main also argues that his express
22 reservation in the plea agreement of his right to argue for a
23 downward departure indicates that the Sentencing Guidelines
24 continued to play a role in determining his sentence. Again,
25 however, section 3582(c)(2) only applies when the defendant "has

