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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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|---------------------------|---|---|
| UNITED STATES OF AMERICA, |) | Case No. CV 15-03505 DDP |
| |) | [CR 11-00072 DDP] |
| Plaintiff, |) | |
| |) | ORDER DENYING DEFENDANT'S MOTION |
| v. |) | TO CORRECT SENTENCE UNDER 28 |
| |) | U.S.C. § 2255 |
| ANDRANIK BAKHCHADJIAN, |) | |
| |) | |
| Defendants. |) | |

Presently before the Court is Defendant/Petitioner Andranik Bakhchadjian's ("Petitioner") motion to reduce his sentence under 28 U.S.C. § 2255. Having considered the parties' submissions, the Court adopts the following order.

I. BACKGROUND

Petitioner pled guilty to one count of bank fraud under 18 U.S.C. § 1344 and was sentenced to 110 months. Petitioner now asks this Court to change his sentence due to a "New Rule of Criminal Procedure' pursuant to Proposition 47, PC 1170.18(a)-(e)." (Motion under 28 U.S.C. § 2255 at 5 ("Motion").) Proposition 47 was a California ballot initiative that reclassified certain former felonies into misdemeanors. (See Gov't Opp'n at 2.)

1 Here, Petitioner claims he has filed a reclassification
2 petition under Proposition 47 in California state court for a
3 previous offense. (Motion at 5.) Due to the one-year statute of
4 limitations for § 2255 motions, Petitioner filed his § 2255 motion
5 in this Court before the California state court resolved his
6 reclassification petition. (Id.) Petitioner asks this Court to
7 stay his § 2255 proceeding pending the California state court
8 proceeding. (Id. (on reverse side of page)) Petitioner alleges
9 that if the California state court reclassifies his former offense
10 from a felony to a misdemeanor, he will then ask this Court to "re-
11 calculate[] his points and change the 3 point enhancement to 1
12 point for this prior charge as it will be reduced from a Felony to
13 a Misdemeanor, this reducing Petitioner's sentence to a criminal
14 History Level IV instead of V." (Id.)

15 The Government opposes this motion, arguing that even if
16 Petitioner is successful in reclassifying his former offense, such
17 reclassification will have no effect on his federal sentence
18 because "[t]he Sentencing Guidelines assign criminal history points
19 entirely without regard to whether a conviction is a felony or a
20 misdemeanor." (Gov't Opp'n at 3.) Instead, the Government argues,
21 the Sentencing Guidelines assign points for criminal history "based
22 solely on the length of the sentence imposed." (Id.) Thus,
23 according to the Government, changing Petitioner's prior offense
24 from a felony to a misdemeanor does not change the fact that
25 Petitioner was given a sixteen-month sentence, which provides three
26 criminal history points. (Id.)

27 Petitioner contests this understanding of the Sentencing
28 Guidelines, and further argues that his prior crime was non-violent

1 and the trend of state and federal sentencing amendments is to
2 reduce sentences for certain non-violent crimes. (Pet. Reply at 2-
3 4.)

4 **II. LEGAL STANDARD**

5 Section 2255 allows federal prisoners to file motions to
6 vacate, set aside, or correct a sentence on the ground that "the
7 sentence was imposed in violation of the Constitution or laws of
8 the United States, or that the court was without jurisdiction to
9 impose such sentence, or that the sentence was in excess of the
10 maximum authorized by law, or is otherwise subject to collateral
11 attack[.]" 28 U.S.C. § 2255(a).

12 **III. DISCUSSION**

13 The relevant parts of the Federal Sentencing Guidelines are §
14 4A1.1, which provides for criminal history points to be totaled to
15 determine the criminal history category, and § 4A1.2, which
16 provides instructions for computing this criminal history. Section
17 4A1.1(a) says: "Add 3 points for each prior sentence of
18 imprisonment exceeding one year and one month."

19 Section 4A1.2 has detailed instructions for determining what
20 is a "prior sentence," what is a "sentence of imprisonment," what
21 sentences are included in making this determination, and what is
22 the applicable time period for considering past criminal history.
23 Relevant here, a "prior sentence" is "any sentence previously
24 imposed upon adjudication of guilt"; a "sentence of imprisonment"
25 is "a sentence of incarceration and refers to the maximum sentence
26 imposed"; and "[s]entences for all felony offenses are counted[;]
27 [s]entences for misdemeanor and petty offenses are counted, except"
28 certain named offenses as are listed in the guidelines. See U.S.

1 Sentencing Guidelines Manual § 4A1.2(a)(1), (b)(1), (c). Further,
2 a "felony offense" is defined "[f]or the purposes of § 4A1.2(c)" as
3 "any federal, state, or local offense punishable by death or a term
4 of imprisonment exceeding one year, regardless of the actual
5 sentence imposed." Id. at (o). Subsection (c) requires "all
6 felony offenses" to be counted in calculating criminal history
7 points, absent some other exception.

8 The plain language of these provisions control the outcome of
9 this motion. According to his presentence report, Petitioner was
10 convicted of receiving stolen property, a felony, and sentenced to
11 sixteen months in California state court. (Presentence Report ¶
12 104.) This is the prior offense that Petitioner is now having
13 reclassified as a misdemeanor. But a sixteen-month sentence,
14 regardless of whether it is a felony or misdemeanor, is a prior
15 sentence of incarceration exceeding one year and one month under §
16 4a1.1(a), thus resulting in three points. Reclassifying the prior
17 offense as a misdemeanor does not change the fact that Petitioner
18 had a prior sixteen-month sentence.

19 Further, as defined in § 4.A1.2(o), a "felony offense" is an
20 offense punishable by imprisonment of more than a year, as was
21 Petitioner's situation. Thus, even if the offense Petitioner was
22 convicted of in California was always a misdemeanor under
23 California law, his sixteen-month sentence would still give him a
24 "felony" and three criminal history points under the federal
25 Sentencing Guidelines. While perhaps Petitioner, if convicted now,
26 would receive a lesser sentence as a misdemeanant, the crucial fact
27 is that Petitioner was convicted previously and sentenced to
28 sixteen months. Therefore, the Court finds that there is no

1 grounds under the Sentencing Guidelines to change Petitioner's
2 sentence.

3 **IV. CONCLUSION**

4 For the reasons set forth above, the Court DENIES Defendant's
5 motion.

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7 IT IS SO ORDERED.

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10 Dated: November 3, 2015


DEAN D. PREGERSON
United States District Judge

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