

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

vs

GABRIEL RUIZ-GERARDO,

Plaintiff,

Defendant.

CASE NO. 13CR983-LAB

**ORDER DENYING MOTIONS FOR
REDUCTION OF SENTENCE**
[Doc. Nos. 46 & 48]

In 2013, this Court sentenced Gabriel Ruiz-Gerardo to 70 months in custody after he pled guilty to possessing 11.89 kilograms of actual methamphetamine with the intent to distribute it. Ruiz-Gerardo has now filed a motion to vacate his sentence under 22 U.S.C. § 2255 [Doc. 46] and a second motion to reduce his sentence under 18 U.S.C. § 3582 [Doc. 48].

Beginning with the § 2255 motion, it comes more than a year after Ruiz-Gerardo's sentencing and is therefore late. See 22 U.S.C. § 2255(f). Ruiz-Gerardo doesn't argue that any exception to the one year time bar applies, and none is apparent. Besides, Ruiz-Gerardo waived his right to collaterally attack his sentence if the Court followed the plea agreement he made with the Government, which the Court did. No relief is available under § 2255.

As far as Ruiz-Gerardo's alternative motion to reduce his sentence under § 3582(c), he is ineligible. Section 3582(c)(2) authorizes a court discretion to reduce a defendant's original sentence when the sentence is "based on" a guideline range that has subsequently

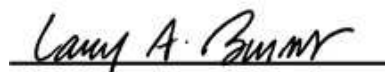
1 been lowered by an amendment to the Guidelines. After Ruiz-Gerardo was sentenced, the
2 U.S. Sentencing Commission approved Amendment 782 to the Guidelines, which lowered
3 the sentencing range for most drug offenses by 2 levels. The Commission also voted to
4 make the changes retroactive. But Amendment 782 doesn't apply to Ruiz-Gerardo's original
5 sentence since he admitted that he possessed for distribution more than 4.5 kilograms of
6 actual methamphetamine and Amendment 782 did not lower the Guidelines for such large
7 amounts of drugs.

8 In addition, in imposing the original sentence the Court granted a 4-level Fast Track
9 departure and a 17-month variance from the low end of Ruiz-Gerardo's applicable Guideline
10 range. When those concessions are backed out of his amended Guideline range, as they
11 must be, see *United States v. Aragon-Rodriguez*, 624 Fed. Appx. 542, *3, 2015 U.S. App.
12 LEXIS 21377 (9th Cir. Nov. 19, 2015) (the only Chapter Five departure that counts in
13 calculating a defendant's amended Guideline range under § 3582(c) is for substantial
14 assistance), the low end of the amended Guideline range remains higher than the sentence
15 that the Court originally imposed. A court may not reduce a sentence under 3582(c)(2)
16 unless the low end of the amended Guideline range is less than the sentence originally
17 imposed. Here it's not.

18 In sum, Ruiz-Gerardo is not eligible to have his sentence reduced under either code
19 section he relies on. His motion is **DENIED**.

20 **IT IS SO ORDERED.**

21 DATED: August 14, 2017

22 

23 **HONORABLE LARRY ALAN BURNS**
24 United States District Judge

25
26
27
28