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DEBORAH S. HUNT, Clerk

No. 17-5371

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Dec 14, 2017

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

)

Plaintiff-Appellee,

)

v.

)

AMILCAR C. BUTLER,

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR

Defendant-Appellant.

THE MIDDLE DISTRICT OF

TENNESSEE

)

)

O R D E R

Before: COLE, Chief Judge; MERRITT and BOGGS, Circuit Judges.

Amilcar C. Butler, a federal prisoner proceeding pro se, appeals the district court's order denying his motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2002, a jury found Butler guilty of conspiracy to possess and attempted possession of five kilograms or more of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846. The district court determined that Butler was subject to a mandatory life sentence under 21 U.S.C. § 841(b)(1)(A) because he had two or more prior felony drug convictions and sentenced him to a term of life imprisonment. We affirmed Butler's conviction and sentence. *United States v. Butler*, 137 F. App'x 813, 820 (6th Cir. 2005).

In 2016, President Barack Obama commuted Butler's sentence to a 240-month term of imprisonment. In 2017, Butler filed the current motion, arguing that his sentence should be reduced even further pursuant to Amendment 782 to the Sentencing Guidelines. Amendment 782 reduced by two levels most of the offense levels listed in the Guidelines' Drug Quantity Table. *See* USSG § 2D1.1(c). Butler argued that he was entitled to a reduced sentence because Amendment 782 reduced his base

offense level from 32 to 30. *See USSG § 2D1.1(c)(5)*. The district court denied the motion, finding that Butler was ineligible for relief under § 3582(c)(2). Butler filed a motion for reconsideration, which was denied.

On appeal, Butler challenges the district court's finding that he is ineligible for relief under § 3582(c)(2).

We ordinarily review the denial of a motion to modify a sentence under 18 U.S.C. § 3582(c)(2) for an abuse of discretion. *United States v. Taylor*, 749 F.3d 541, 543 (6th Cir. 2014). However, when a district court concludes, as it did here, that a defendant is ineligible for a reduction under the statute, the decision is a question of law that we review *de novo*. *United States v. Webb*, 760 F.3d 513, 517 (6th Cir. 2014).

The district court properly concluded that Butler is not entitled to a reduced sentence. Under 18 U.S.C. § 3582(c)(2), a defendant is eligible for a sentence reduction if (1) the defendant has been “sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission” and (2) the reduction “is consistent with applicable policy statements issued by the Sentencing Commission.”

Butler, however, was not sentenced based on a guidelines range that was subsequently lowered by the Sentencing Commission. Butler was subject to a mandatory life sentence under 21 U.S.C. § 841(b)(1)(A), which acted as his guidelines sentence. *See United States v. Kelley*, 570 F. App'x 525, 531 (6th Cir. 2014) (holding that a statutory mandatory minimum sentence supersedes a lower guideline range). Because Butler's guideline sentence of life imprisonment was unaffected by Amendment 782, he is ineligible for relief under § 3582(c)(2).

Accordingly, we **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

No. 17-5371

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 21, 2018
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

AMILCAR C. BUTLER,

Defendant-Appellant.

ORDER

BEFORE: COLE, Chief Judge; MERRITT and BOGGS, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

John S. Smith

Deborah S. Hunt, Clerk

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