

APPENDIX

APPENDIX A District Court Order(s)

APPENDIX B Sixth Circuit Court Of Appeals Order(s)

APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA

v.

AMILCAR C. BUTLER
Defendant.

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Criminal No. 3:02-cr-00097
Judge Trauger

ORDER

The defendant was convicted of two drug trafficking charges, for which he received concurrent life sentences. Docket Entry Nos. 49 and 50. Because the defendant qualified for Career Offender status, the life sentences were mandatory.

On appeal, the convictions and sentences were affirmed, and the Supreme Court denied defendant's petition for a writ of certiorari. United States v. Butler, 137 F.App'x 813 (6th Cir; 6/22/05).

On December 19, 2016, President Obama commuted the defendant's sentences to 240 months of imprisonment, with the remaining components of his sentences left intact. Docket Entry No. 254.

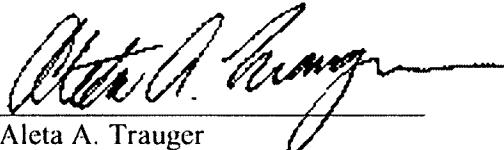
Following the commutation of his sentences, the defendant filed a petition (Docket Entry No. 255) seeking a further reduction pursuant to the 782 Amendment. By an order (Docket Entry No. 261) entered February 14, 2017, the Court denied the defendant's petition.

Presently before the Court is defendant's motion (Docket Entry No. 262) to alter or amend

the order denying him relief pursuant to the 782 Amendment.

Having carefully reviewed the defendant's motion and the record in this case, the Court finds that the defendant's motion has no merit. Accordingly, for the reasons previously stated (Docket Entry No. 261), the defendant's motion to alter or amend is hereby DENIED.

It is so ORDERED.



Aleta A. Trauger
United States District judge

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,)
)
v.) Criminal No. 3:02-cr-00097
) Judge Trauger
AMILCAR C. BUTLER)

ORDER

Pending before the court are the Defendant's Petition Of "Eligibility" For Reduction Of Sentence Pursuant To The 782 Amendment (Docket No. 255); the Government's Response (Docket No. 257) in opposition; and the Defendant's Reply brief (Docket No. 259). Through the Petition, the Defendant requests a reduction in his sentence based on Amendment 782 to the United States Sentencing Guidelines. For the reasons set forth herein, the Defendant's Petition is DENIED.

Amendment 782, which went into effect on November 1, 2014, reduces by two the offense levels assigned in the Drug Quantity Table, U.S.S.G. § 2D1.1, resulting in lower guideline ranges for most drug trafficking offenses. The Amendment has been given retroactive effect. U.S.S.G. § 1B1.10(d), (e).

A sentence of imprisonment is a final judgment and may be modified by a district court only in limited circumstances. *Dillon v. United States*, 560 U.S. 817, 130 S.Ct. 2683, 2690, 177 L.Ed.2d 271 (2010). A limited exception to the general rule of finality is authorized by 18 U.S.C. § 3582(c)(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered and made retroactive by the Sentencing Commission. Section 3582(c)(2) provides:

(c) Modification of an imposed term of imprisonment.--The court may not modify a term of imprisonment once it has been imposed except that--

* * *

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

“In determining whether, and to what extent, a reduction in the defendant’s term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted,” the court is to “determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced.” U.S.S.G. § 1B1.10(b)(1).

In this case, the Defendant was convicted after a jury trial before Judge Todd J. Campbell of two drug trafficking charges involving five kilograms or more of cocaine. (Docket Nos. 49, 50). At the subsequent sentencing hearing, Judge Campbell determined that the Defendant was a Career Offender under the Sentencing Guidelines, but concluded that the sentence was ultimately driven by the drug trafficking statute, 21 U.S.C. § 841(b)(1)(A), which required a mandatory life sentence because the Defendant had two or more prior felony drug convictions. (Docket Nos. 144, at 85-86; 130, 131). As Judge Campbell explained, Section 5G1.1 of the Sentencing

Guidelines provides that a mandatory statutory sentence becomes the applicable guideline sentence. (Docket No. 144, at 86). Consequently, Judge Campbell sentenced the Defendant to life imprisonment. (Docket No. 144, at 85-95; 130, 131).

On appeal, the Sixth Circuit affirmed, and the Supreme Court denied the Defendant's petition for writ of certiorari. *United States v. Butler*, 137 Fed. Appx. 813 (6th Cir. June 22, 2005); (Docket No. 151). On December 19, 2016, the President commuted the Defendant's sentence to 240 months imprisonment, but left all other components of the sentence intact. (Docket No. 254, at 2). This case was subsequently transferred to the undersigned Judge.

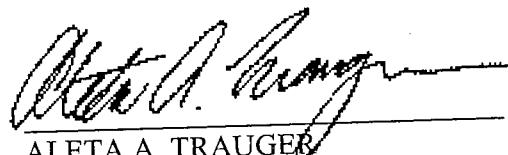
As discussed above, the Defendant's sentence was based on the drug trafficking statute, 21 U.S.C. § 841(b)(1)(A), rather than the Sentencing Guideline for drug trafficking offenses. Therefore, the Defendant remains subject to the statutory mandatory minimum sentence despite Amendment 782's two-level reduction to the Drug Quantity Table. See U.S.S.G. § 1B1.10, App. Note 1(A) (Statutory mandatory minimum is to be applied before determining whether the applicable guideline range has been lowered by a retroactive amendment); United States v. Kelley, 570 Fed. Appx. 525, 531 (6th Cir. 2014) ("Accordingly, the amendments at issue do not lower Kelley's applicable guideline range, because the statutory mandatory minimum term of imprisonment trumps his otherwise applicable guideline range."); United States v. McClain, 691 F.3d 774 (6th Cir. 2012).

The Defendant argues that the commutation of his sentence to 240 months makes him eligible for a further reduction under Amendment 782. The commutation did not lower the Defendant's sentencing range, however, as required for eligibility for a sentencing reduction under Section 3582(c)(2). See United States v. Buenrostro, 2016 WL 6895445 (E.D. Ca. Nov.

23, 2016). Accordingly, the Defendant's Petition is DENIED.

It is so ORDERED.

Enter this 14th day of February 2017.



ALETA A. TRAUGER
U.S. District Judge

APPENDIX B

RECEIVED

JAN 08 2018

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

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,

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Plaintiff-Appellee,

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v.

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AMILCAR C. BUTLER,

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Defendant-Appellant.

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ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF
TENNESSEE

ORDER

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.

O R D E R

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



Deborah S. Hunt, Clerk