

No. __-_____

IN THE
SUPREME COURT OF THE UNITED STATES
_____ TERM

WILLIAM SHANE REID,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit**

APPENDIX

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Counsel for William Shane Reid

888 F.3d 256

United States Court of Appeals, Sixth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

William Shane REID, Defendant-Appellant.

No. 17-5451

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Decided and Filed: April 23, 2018

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Rehearing En Banc Denied July 11, 2018

Synopsis

Background: Defendant moved for sentence reduction. The United States District Court for the Eastern District of Tennessee, No. 4:12-cr-00027-1, Harry S. Mattice, Jr., J., denied motion, and defendant appealed.

[Holding:] The Court of Appeals, Siler, Circuit Judge, held that it lacked jurisdiction over defendant's appeal.

Dismissed.

Appeal from the United States District Court for the Eastern District of Tennessee at Winchester. No. 4:12-cr-00027-1—Harry S. Mattice, Jr., District Judge.

Attorneys and Law Firms

ON BRIEF: Jennifer Niles Coffin, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Knoxville, Tennessee, for Appellant. Terra L. Bay, UNITED STATES ATTORNEY'S OFFICE, Chattanooga, Tennessee, for Appellee.

Before: SILER, BATCHELDER, and DONALD, Circuit Judges.

OPINION

SILER, Circuit Judge.

***257** Following his guilty plea on a drug offense, William Shane Reid was sentenced to 145 months' imprisonment. Reid later moved the district court to reduce his sentence based upon retroactive amendments to the Sentencing Guidelines. The district court denied his motion. Because we lack jurisdiction, we DISMISS Reid's appeal.

I.

In 2012, Reid pleaded guilty to conspiring to manufacture methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(B). The district court calculated Reid's guidelines range as 151 to 188 months and in 2013 sentenced him within that range to 170 months' imprisonment. Reid's sentence was later reduced to 145 months, a 4% downward departure from the bottom of the guidelines range, following the United States' motion under Federal Rule of Criminal Procedure 35(b).

Amendment 782 to the Sentencing Guidelines went into effect in 2014. Among other things, the amendment reduced by two levels the base offense levels set forth in USSG § 2D1.1(c), the guidelines section under which Reid was sentenced. USSG app. C, amend. 782 (Nov. 1, 2014). The Sentencing Commission made Amendment 782 retroactive. *Id.* app. C, amend. 788 (Nov. 1, 2014). The parties agree that Reid's amended guidelines range is 130 to 162 months. Additionally, because Reid was previously granted a 4% downward departure under Rule 35(b), he is eligible for a comparable reduction to 125 months from his amended guidelines range. *Id.* § 1B1.10(b)(2)(B).

Reid filed a motion in 2016 under 18 U.S.C. § 3582(c)(2) to reduce his sentence. Aside from the guideline amendments, Reid emphasized his post-sentencing rehabilitative conduct. The United States agreed that Reid was eligible for a sentence reduction and took no position on his motion. The government pointed out, however, that Reid had incurred two disciplinary sanctions while incarcerated, for possessing "drugs/alcohol" and tobacco, respectively. The district court denied Reid's motion, stating that "Defendant's disciplinary infractions while incarcerated indicate that he has not gained respect for the law. These infractions are all-the-more troubling given that Defendant was on federal supervised release when he

committed the instant offense.” This appeal followed.

II.

^[1]We review the district court’s denial of Reid’s § 3582(c)(2) motion on the merits for an abuse of discretion. *United States v. Curry*, 606 F.3d 323, 327 (6th Cir. 2010) (citing *United States v. Carter*, 500 F.3d 486, 490 (6th Cir. 2007)). However, as in every case, we are first obligated to examine whether we possess jurisdiction to entertain Reid’s appeal.

^[2]“Criminal defendants enjoy no constitutional right to appeal their convictions; accordingly, in order to appeal one must come within the terms of some applicable statute.” *United States v. Bowers*, 615 F.3d 715, 718 (6th Cir. 2010) (quoting *Abney v. United States*, 431 U.S. 651, 656, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)) (cleaned up). In *Bowers*, we held that our jurisdiction to entertain a defendant’s appeal of the district court’s denial of a § 3582(c)(2) sentence-reduction motion derives from *258 18 U.S.C. § 3742. *Id.* at 722. That statute grants us jurisdiction when a sentence “(1) was imposed in violation of law; (2) was imposed as a result of an incorrect application of the sentencing guidelines; or (3) is greater than the sentence specified in the applicable guideline range ...; or (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.” 18 U.S.C. § 3742(a). Our jurisdiction under § 3742 is “tightly circumscribed,” *Bowers*, 615 F.3d at 719, and Reid may not “invoke the broad grant of appellate jurisdiction found in [28 U.S.C.] § 1291 to circumvent the conditions imposed by 18 U.S.C. § 3742 for appealing sentences,” *id.* (citations and alteration omitted).

Reid invokes § 3742(a)(1), arguing that the district court’s denial of his sentence-reduction motion resulted in a sentence that was “imposed in violation of law,” for two reasons. First, he argues that the district court failed to provide a “reasoned basis” for denying his motion. Second, he argues that the district court “misappl[ie]d the governing statutory criteria” to the facts of his case. In support, Reid cites cases in which we entertained identical arguments post-*Bowers*. In *United States v. Domenech*, 675 Fed.Appx. 519, 524 (6th Cir. 2017), we exercised jurisdiction when the defendant argued that the district court “made ... erroneous findings of fact,” “misapplied

the law when it failed to consider all of the § 3553(a) factors,” and “specifically misapplied the public-safety factor.” And in *United States v. Howard*, 644 F.3d 455, 459-61 (6th Cir. 2011), we heard the appeal of a defendant who argued, among other things, that the district court abused its discretion by failing to adequately explain its ruling. Both *Domenech* and *Howard* arose in the context of sentence-reduction proceedings.

^[3]However, those decisions are not faithful to *Bowers*. At their core, Reid’s arguments are challenges to the procedural and substantive reasonableness of the outcome of his § 3582(c)(2) sentence-reduction proceeding under the “reasonableness” review that the Supreme Court instituted in *United States v. Booker*, 543 U.S. 220, 261-62, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005). In *United States v. Thomas*, 498 F.3d 336, 340-1 (6th Cir. 2007), we wrote that an argument that “the district court did not adequately set forth reasons” is a “procedural reasonableness” challenge. Similarly, in *United States v. Liou*, 491 F.3d 334, 337 (6th Cir. 2007) (cleaned up), we said that “a sentence may be substantively unreasonable where the district court selects the sentence arbitrarily, bases the sentence on impermissible factors, fails to consider pertinent § 3553(a) factors, or gives an unreasonable amount of weight to any pertinent factor.” But *Bowers* explicitly held that we do not have jurisdiction under § 3742(a)(1) to consider such arguments in appeals from the denial of sentence-reduction motions: “[A] defendant’s allegation of *Booker* unreasonableness in a § 3582(c)(2) proceeding does not state a cognizable ‘violation of law’ that § 3742(a)(1) would authorize us to address on appeal.” *Bowers*, 615 F.3d at 727.

^[4]We are obliged to follow the explicit holding of *Bowers*, later cases notwithstanding. “[W]hen a later decision of this court conflicts with one of our prior published decisions, we are still bound by the holding of the earlier case.” *Darrah v. City of Oak Park*, 255 F.3d 301, 310 (6th Cir. 2001). And pursuant to *Bowers*, we do not possess jurisdiction to entertain Reid’s *Booker* unreasonableness arguments.

Appeal DISMISSED.

All Citations

888 F.3d 256

No. 17-5451

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 11, 2018
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIAM SHANE REID,

Defendant-Appellant.

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ORDER

BEFORE: SILER, BATCHELDER, and DONALD, 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

UNITED STATES DISTRICT COURT
for the
Eastern District of Tennessee

United States of America

v.

WILLIAM SHANE REID

Case No: 4:12-cr-27-1

USM No: 40999-074

Date of Original Judgment: 02/11/2013

Date of Previous Amended Judgment: 09/19/2014

(Use Date of Last Amended Judgment if Any)

Gianna Maio; Jonathan Moffatt

Defendant's Attorney

**ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)**

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months is reduced to _____.

(Complete Parts I and II of Page 2 when motion is granted)

Order rules on Doc(s): 135

Except as otherwise provided, all provisions of the judgment dated 09/19/2014 shall remain in effect.

IT IS SO ORDERED.

Order Date: 03/28/2017

/s/ Harry S. Mattice, Jr.

Judge's signature

Effective Date: _____
(if different from order date)

Hon. Harry S. Mattice, Jr., United States District Judge

Printed name and title