

APPENDIX A

Appellate Court Order

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-5381

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 20, 2018
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
 BRIAN MICHAEL BURTON,) THE EASTERN DISTRICT OF
) TENNESSEE
 Defendant-Appellant.)
)
)

O R D E R

Before: ROGERS, KETHLEDGE, and NALBANDIAN, Circuit Judges.

Brian Michael Burton, a pro se federal prisoner, appeals a district court order denying his motion to reduce his sentence filed 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 2015, Burton pleaded guilty to one count of enticement of a minor for sexual purposes, in violation of 18 U.S.C. § 2422(b). He was sentenced to the statutory mandatory minimum term of 120 months in prison, *see* 18 U.S.C. § 2422(b), to be followed by ten years of supervised release.

Burton then filed the present motion to reduce his sentence pursuant to § 3582(c)(2), arguing that: (1) his sentence should be reduced to twenty-one months to align with sentences imposed in other cases in which defendants have committed crimes of similar severity; (2) a downward departure under 18 U.S.C. § 3553 is warranted in view of the nature and

circumstances of his offense and his background and history; and (3) equal protection and due process considerations warrant a lower sentence.

The district court denied the motion, reasoning that it lacked authority to reduce Burton's sentence under § 3582(c)(2) because Burton failed to identify any applicable amendment to the guidelines that would lower his guidelines range—a requirement for a defendant to be resentenced under § 3582(c)(2)—and that it lacked authority to reduce Burton's sentence under § 3553. Moreover, the district court added that, even if it had the authority to resentence Burton, he would still be subject to the 120-month mandatory minimum sentence provided by § 2422(b). Finally, the district court rejected Burton's equal protection and due process arguments as meritless. Burton now appeals the district court's judgment.

We generally review for an abuse of discretion a district court's decision to deny a § 3582(c)(2) motion. *United States v. Riley*, 726 F.3d 756, 758 (6th Cir. 2013). Whether the district court has the authority to grant relief under § 3582(c)(2), however, “is a question of law that this court reviews *de novo*.” *Id.*

Section 3582(c)(2) permits a district court to modify the sentence 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.” Eligibility for a reduction under this provision is triggered only by an amendment that lowers the defendant's applicable guideline range. USSG § 1B1.10(a)(2); *see Dillon v. United States*, 560 U.S. 817, 826-27 (2010). A reduction cannot be granted if the amendment in question “does not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory mandatory minimum term of imprisonment).” USSG § 1B1.10, comment. (n.1(A)).

The district court did not err when it denied Burton's motion for a sentence reduction. Burton's sentence is not “based on a sentencing range that has subsequently been lowered,” 18 U.S.C. § 3582(c)(2); rather, it is based on the ten-year statutory minimum provided by § 2422(b). Burton therefore is ineligible for a sentence reduction. *See, e.g., United States v. McPherson*, 629 F.3d 609, 611-12 (6th Cir. 2011) (finding that the defendant was not eligible for a sentence

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reduction under § 3582(c)(2) because his sentence was based on a statutory mandatory minimum, rather than on a guidelines range that was subsequently reduced).

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

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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