

## UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



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## ORDER

Submitted January 12, 2018

Decided January 18, 2018

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 17-1985	UNITED STATES OF AMERICA, Plaintiff - Appellee v. LOUISE K. SAINÉ, Defendant - Appellant
<b>Originating Case Information:</b>	
District Court No: 4:12-cr-40098-JPG-1 Southern District of Illinois District Judge J. Phil Gilbert	

Louise Saine appeals the denial of her motion to reduce sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 782. The district court denied the motion on the ground that Saine was sentenced based on the career offender guidelines, and Amendment 782 did not affect her guidelines range. We affirm.

In 2012 Saine pleaded guilty to one count of distribution of cocaine and two counts of distribution of cocaine base. The government had filed an enhancement pursuant to 21 U.S.C. § 851, based on her five prior felony drug convictions, and the Presentence Investigation Report ("PSR") determined that Saine qualified as a career offender under U.S.S.G. § 4B1.1. Although her base offense level based on the relevant drug conduct would have been level 12 under U.S.S.G. § 2D1.1, Saine's base offense level as a career offender was raised to level 34 under U.S.S.G. § 4B1.1. Saine's total

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offense level was reduced by three levels for acceptance of responsibility to 31, resulting in a sentencing range of 188 to 235 months' imprisonment. In her objections to the PSR, Saine did not dispute that she was a career offender, but she argued that the career offender guidelines were flawed and the district court should disregard them. At sentencing, the district court adopted the findings of the PSR and explicitly stated that Saine is a career offender and her base offense level is 34 because of the chapter four enhancement. The court nonetheless departed downward from the applicable range based on the factors set forth in 18 U.S.C. § 3553(a) factors and sentenced Saine to 108 months' imprisonment.

On appeal Saine argues that the district court did not rely entirely on the career offender guidelines at her sentencing, and she should be eligible for a sentencing reduction. She contends that the district court took the drug table into account when it imposed a sentence that was below the applicable career offender guidelines range. This is contrary to the district court's findings at sentencing. The district court found that Saine was a career offender and her base offense level was 34 under U.S.S.G. § 4B1.1. Saine's applicable guidelines range is the range that the district court found before it made any departures. *United States v. Jehan*, 876 F.3d 891, 894 (7th Cir. 2017) (per curiam), citing *United States v. Guyton*, 646 F.3d 316, 319 (7th Cir. 2011). Even though the district court chose to depart downward based on the factors set forth in § 3553(a), Saine's sentence was based on the career offender guidelines.

Saine also argues that her prior drug convictions were related to the present conviction and should not be counted for career-offender purposes. The prior convictions are not considered related to the present conviction because they did not occur on the same occasion, they were not jointly planned and were not part of a common scheme, and they were not consolidated for trial or sentencing. See *United States v. Elliot*, 703 F.3d 378, 383 (7th Cir. 2012) (discussing when crimes occur on separate occasions). Moreover, Saine's challenge to the determination that she was a career offender cannot be raised in a § 3582(c)(2) motion. Section 3582(c)(2) applies only when a defendant has been sentenced based on a sentencing range that has subsequently been lowered, and Saine's range has not been lowered.

None of the recent amendments to the crack cocaine guidelines affect the career offender guidelines. Because Saine's sentence was based on the career offender guidelines, U.S.S.G. § 4B1.1, Amendment 782 did not lower her offense level and guideline range. The district court therefore lacked the authority to grant the motion to reduce sentence. *United States v. Griffin*, 652 F.3d 793, 803 (7th Cir. 2011), cert. denied, 132 S. Ct. 1124 (2012); *United States v. Guyton*, 636 F.3d 316 (7th Cir. 2011).

Accordingly, **IT IS ORDERED** that the judgment of the district court is **AFFIRMED**.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 12-cv-40098-JPG-

LOUISE K. SAINÉ,

Defendant.

**MEMORANDUM AND ORDER**

This matter comes before the Court on a motion (Doc. 74) from defendant Louise K. Sainé to reopen a prior motion for a sentence reduction in light of Amendment 782 to the United States Sentencing Guidelines Manual ("U.S.S.G.") (Doc. 53). The Court denied that motion, and that decision is currently on appeal (Appeal No. 17-1985). The Court does not have jurisdiction to grant relief concerning an issue currently on appeal. "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). The Court therefore **DISMISSES** Sainé's motion to reopen (Doc. 74).

However, the Court believes Sainé's motion could also be construed as a motion for a sentence reduction under 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10 based on a different guideline amendment – Amendment 780. Accordingly, the Court **DIRECTS** the Clerk of Court to refile her motion as a motion for a sentence reduction under Amendment 780.

**IT IS SO ORDERED.**

**DATED: October 31, 2017**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**

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