

Appendix A

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-6446

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICHARD L. BRYANT, a/k/a Pumpkin, a/k/a Rock,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, Senior District Judge. (2:92-cr-00088-6)

Submitted: August 30, 2019

Decided: September 13, 2019

Before NIEMEYER, WYNN, and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Richard L. Bryant, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richard L. Bryant appeals the district court's order denying his motion to reduce his sentence under the First Step Act of 2018 (First Step Act), Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222. Under the First Step Act, “[n]o court shall entertain a motion made under [section 404] to reduce a sentence . . . if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits.” § 404(c), 132 Stat. at 5222. Our review discloses that the court denied Bryant's first motion to reduce his sentence under the First Step Act on the merits, in its order denying reconsideration. Accordingly, the district court lacked jurisdiction under § 404(c) to consider the instant motion.

We therefore affirm the denial of relief. We deny Bryant's motion to expedite and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: November 4, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6446
(2:92-cr-00088-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RICHARD L. BRYANT, a/k/a Pumpkin, a/k/a Rock

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and motion for reassignment of case to a different judge on remand.

Entered at the direction of the panel: Judge Niemeyer, Judge Wynn, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix B

UNITED STATES DISTRICT COURT
for the
Eastern District of Virginia

United States of America

v.

Richard L. Bryant

Date of Original Judgment: December 18, 1992

Date of Previous Amended Judgment: _____

(Use Date of Last Amended Judgment if Any)

) Case No: 2:92cr88-6

) USM No: 25043-083

) Pro Se

Defendant's Attorney

**ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(1)(B)**

Upon motion of the defendant the Director of the Bureau of the court under 18 U.S.C. § 3582(c)(1)(B) for a reduction in the term of imprisonment imposed based on the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, and having considered such motion, and taking into account 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)

Except as otherwise provided, all provisions of the judgment dated December 18, 1992 shall remain in effect.

IT IS SO ORDERED.

Order Date: March 30, 2019

/s/

Rebecca Beach Smith
United States District Judge

RBS

Judge's signature

Effective Date: _____
(if different from order date)

Rebecca Beach Smith, United States District Judge

Printed name and title

This page contains information that should not be filed in court unless under seal.

(Not for Public Disclosure)

DEFENDANT: Richard L. Bryant

CASE NUMBER: 2:92cr88-6

DISTRICT: Eastern District of Virginia

I. COURT DETERMINATION OF GUIDELINE RANGE (*Prior to Any Departures*)

Previous Total Offense Level: 46

Amended Total Offense Level: 46

Criminal History Category: VI

Criminal History Category: VI

Previous Guideline Range: Life

Amended Guideline Range: Life

II. COURT DETERMINATION OF STATUTORY PENALTY

Previous Statutory Penalty: 10 years to Life

Amended Statutory Penalty: 10 years to Life

III. SENTENCE RELATIVE TO THE AMENDED GUIDELINE RANGE

- The reduced sentence is within the amended guideline range.
- The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a substantial assistance departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
- The reduced sentence is above the amended guideline range.

IV. ADDITIONAL COMMENTS

This matter comes before the court on Defendant's "Motion for Modification of Sentence Pursuant to 18 U.S.C. 3682(c)(2)," seeking relief "under any of the relevant 'crack amendments[,']" including section 404(b) of the 'First Step Act of 2018'" ("Motion"). ECF No. 160 at 1. This Motion is the third such motion Defendant has filed in three months. In January 2019, Defendant filed a "Motion for Reduction of Sentence Based on the 'First Step Act' of 2018 Pursuant to 18 U.S.C. 3582(c)(2)," ECF No. 155, which the court construed as a successive § 2255 motion and denied, ECF No. 156. In February 2019, Defendant filed a "Request for Reconsideration of Motion for Reduction of Sentence Based on Clarification that Alters the Circumstances," ECF No. 158, which the court again denied, ECF No. 159. In March 2019, the court received Defendant's instant Motion. Defendant's repetitive filings, without merit, are becoming abusive.

As the court's February 12, 2019 Order stated, this court has previously reviewed Defendant's sentence and denied a sentence reduction in accordance with the relevant Guideline Amendments 750 and 782, among others. ECF No. 159 at 2 (citing ECF Nos. 91, 93, 107, 108). The court lacks authority to reconsider its prior rulings denying a sentence reduction in accordance with those guidelines. *Id.* (citing United States v. Goodwyn, 596 F.3d 233, 236 (4th Cir. 2010)). As reflected supra Part I, Defendant has not raised any new Amendment to the Sentencing Guidelines that would further amend his Guideline Range from the last time the court reviewed his Guideline Range in March 2016. See ECF No. 108 (applying Amendment 782, reporting Defendant's "Amended Total Offense Level" as "46" and Amended Guideline Range as "Life," and noting neither Amendment 750 nor Amendment 505 previously lowered Defendant's Guideline Range).

Furthermore, the court's February 12, 2019 Order also stated that the First Step Act of 2018 ("the Act") does not provide Defendant with relief. ECF No. 159 at 3-5. The court explained that the jury found Defendant guilty of Count One, which charged Defendant with Conspiracy to Distribute and Possess with the Intent to Distribute Cocaine and

"Crack" Cocaine, in violation of 21 U.S.C. § 846. Id. at 3-4 (citing Indictment at 2-3, 16, Doc No. 1; Jury Verdict, Doc. No. 379). "Count One specifically charged the conspiracy with distributing '(a) in excess of five (5) kilograms of cocaine . . . and (b) in excess of fifty (50) grams of a mixture and substance containing cocaine base, commonly known as 'crack.'" Id. (emphasis added) (quoting Indictment at 3, Doc. 1). The court further explained that Defendant does not qualify for relief under the Act because "[a]lthough the statutory penalties for 'crack' cocaine have changed, those for cocaine have not, and therefore, [Defendant] is still subject to the higher statutory penalties for being found guilty of being involved in a conspiracy to distribute in excess of five (5) kilograms of cocaine." Id. at 5.

Moreover, even if this court did have discretion to reduce Defendant's sentence, the court would not do so. The court finds that Defendant's current sentence remains appropriate under all the facts and circumstances of the case, in light of the factors of 18 U.S.C. § 3553(a). Accordingly, Defendant's Motion, ECF No. 160, is DENIED. To be clear, this is a denial of Defendant's Motion after a complete review of his Motion on the merits. Therefore, pursuant to section 404(c) of the Act, this court is not permitted to entertain any further motions to reduce Defendant's sentence in accordance with the Act. First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. If Defendant does not agree with this court's rulings, he is ADVISED that he may appeal from this Order by forwarding, within fourteen (14) days of the date of entry of this Order, a written notice of appeal to the Clerk of the United States District Court, U.S. Courthouse, 600 Granby Street, Norfolk, Virginia 23510.