

**ENTERED**

October 01, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

UNITED STATES OF AMERICA,  
*Plaintiff,*

v.

JOSE HERIBERTO RAMIREZ,  
*Defendant.*

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CRIMINAL NO. B-03-903

**ORDER**

The Court has considered Defendant's Motion for Reduction of Sentence Pursuant to Title 18 U.S.C. § 3582(c)(2) [Doc. No. 236]. The Court finds the motion should be and the same is hereby denied, because the sentence was appropriate under the dictates of Title 18 U.S.C. § 3553(a).

SIGNED at Houston, Texas this 1<sup>st</sup> day of October, 2018.



Andrew S. Hanen  
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

JOSE HERIBERTO RAMIREZ  
Petitioner

CASE # 1:03-CR-00903

v.

UNITED STATES OF AMERICA  
Respondent

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MOTION FOR REDUCTION OF SENTENCE  
PURSUANT TO TITLE 18 U.S.C. 3582(c)(2)

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COMES NOW, Jose Heriberto Ramirez, Pro Se Petitioner, and humbly  
requests this Honorable Court accepts this motion pursuant to Title 18  
U.S.C. §3582(c)(2).

**LIBERAL INTERPRETATION**

The Petitioner brings this motion as a pro se litigant. A pro se  
pleading is held to less stringent standards than more formal petitioners  
drafted by lawyers. *<Haines v. Kerner>*, 404 U.S. 519, 520, 90 S. Ct. 594,  
30 L. Ed. 652 (1972).

**JURISDICTION**

District Court retains the original jurisdiction over the charges  
brought by the United States of America in the Southern District of  
Texas in Brownsville, Texas.

**CASE HISTORY**

In 2001, Petitioner was arrested for narcotic offenses. In 2003,  
Petitioner was indicted for conspiracy to distribute marijuana 50-100 Kg.  
Petitioner went to trial in 2005 and was found guilty and sentenced to 92  
months imprisonment, 6 years of Supervised Release, and a \$25,000 fine.  
Petitioner filed an appeal and lost.

## Title 18 U.S.C. § 3582(c)(2) ANALYSIS

The plain language of *<Title 18 U.S.C. 3582(c)(2)>* imposes the requirement that a retroactive amendment lowers a Petitioner's "sentencing range" before relief is authorized. The statute provides:

"The court may not modify a term of imprisonment once it has been imposed except...(2) in a case of a Petitioner 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 *<Title 28 U.S.C. § 994 (o)>*.

As a general rule, a District Court may not modify a term of imprisonment once it has been imposed. *<18 U.S.C. § 3582(c)(2)>*; *<Dillon v. United States>*, 560 U.S. 817, 817 130 S. Ct. 2683, 2687 177 L. Ed. 2d 271 (2010). Several exceptions to this rule exists. Section 3582(c)(2) enables a district court to reduce an already imposed sentence.

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...after considering the factors set forth under *<Title 18 U.S.C. § 3553(a)>* to the extent that they are applicable, if such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission. *<18 U.S.C. § 3582(C)(2)>*(Emphasis added); see also *<United States v. Burrell>*, 622 F. 3d 961, 962 (8th Cir. 2010). The applicable policy statement for *<§ 3582(c)(2)>* is *<U.S.S.G. § 1B1.10>*. *<Dillon>*, 130 S. Ct. at 268. "The statute thus establishes a two-step inquiry. A court must first determine that a reduction is consistent with § 1B1.10 before it may consider whether the authorized reduction is warranted, either in whole or

in part, according to the factors set forth in § 3553(a)." Id at 269.

#### AMENDMENT 782 ANALYSIS

The United States Sentencing Commission on April 14, 2014, after extensive study and input by the public, passed what has come to be known as Drugs-2 Amendment to the Sentencing Guidelines. This Amendment to the Guidelines reduces the Drug Quantity Table for all drug types by two points.

At the initial hearing, it was not ruled upon if the change to the Drug Quantity Table under the United States Sentencing Guidelines § 2D1.1 was to be made retroactive.

On July 18, 2014, the Sentencing Commission voted unanimously to make the Drug-2 Amendment to the Guidelines retroactive.

#### ARGUMENT AND SUPPORTING FACTS

Petitioner's highest base offense level at sentencing was 24, with a 2-level enhancement for possession of a firearm in connection with a drug crime, for a total adjusted offense level of 26, and a criminal history category of four, for a Guideline range of 92-115 months imprisonment.

In consideration of the retro-active 782 Amendment, Petitioner contends that the following Guidelines apply. Base offense level after two point reduction of the 782 Amendment is 22, with a criminal history category of four, for an adjusted offense level of 24, and a Guideline range of 72-96 months imprisonment. The Petitioner humbly points out that at sentencing he was given the low end of the applicable guideline range.

#### TITLE 18 U.S.C. § 3553(a) ANALYSIS

In consideration of a sentence reduction after identifying that a Petitioner is eligible to receive one pursuant to step one in *Dillon*, the court is required to consider factors set forth under *Title 18 U.S.C. § 3553(a)*.

Factors to be considered in imposing a sentence: The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant,
- (2) the need for the sentence imposed--
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.
  - (B) to afford adequate deterrence to criminal conduct,
  - (C) to protect the public from further crimes of the defendant, and
  - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner,
- (3) the kinds of sentences available,
- (4) the kinds of sentencing range established for the applicable offense.

A sentence reduction pursuant to Amend. 782 would in no way jeopardize the public's safety and would respect the law. A reduction would still punish the Petitioner but not in too great a manner.

Moreover in fashioning a sentence the court can "tailor a sentence in light of statutory concerns." *Pepper v. United States*, 131 S. Ct. 1229, 1241, 179 L. Ed 2d 196 (2011).

### CONCLUSION

Petitioner humbly contends he meets the eligibility requirements pursuant to *<Dillon>* for the two point reduction pursuant to Amendment 782. Petitioner also points out that under § 3582(a) factors the reduction in sentence would still meet the issues raised.

### RELIEF REQUESTED

Petitioner requests the court grant this motion for relief under *<Title 18 U.S.C. § 3582(c)(2)>*, and humbly points out that at sentencing he received the low end of his guidelines therefore requests the court reduce his sentence to 77 months.

WHEREFORE, the Petitioner prays the Court will GRANT the relief requested due to the foregoing argument.

### DECLARATION

I, Jose H. Ramirez, do declare under penalty of perjury to *<Title 28 U.S.C. § 1746>*, that the foregoing is true and correct to the best of my knowledge. Signed on \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

Respectfully Submitted,

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Jose H. Ramirez

Reg. No.

FCI Beaumont Low

P.O. Box 26020

Beaumont, Tx 77720

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 18-40989  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

March 11, 2020

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JOSE HERIBERTO RAMIREZ,

Defendant - Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:03-CR-903-1

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Before BARKSDALE, HIGGINSON, and DUNCAN, Circuit Judges.

PER CURIAM:\*

Jose Heriberto Ramirez, federal prisoner # 27159-179 and proceeding *pro se*, challenges the district court's order denying his motion seeking a reduction of his sentence, based on United States Sentencing Guidelines Amendment 782 (lowering drug-related base offense levels) and pursuant to 18 U.S.C. § 3582(c)(2). Ramirez contends the court failed to obtain and consider the archived transcript of his sentencing hearing before ruling on his motion.

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\* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Without the transcript, he asserts, the court was unable to apply the 18 U.S.C. § 3553(a) sentencing factors. He claims: he should have been resentenced at the low end of the amended Guidelines sentencing range; and such a sentence would have been comparable to the original sentence and, therefore, sufficient to satisfy the § 3553(a) sentencing factors.

The court's "decision whether to reduce a sentence pursuant to § 3582(c)" is reviewed for abuse of discretion. *United States v. Henderson*, 636 F.3d 713, 717 (5th Cir. 2011) (internal quotation marks and citation omitted). A decision based on a legal error or a "clearly erroneous assessment of the evidence" is an abuse of discretion. *Id.* (citation omitted). The court's interpretation of the Guidelines is reviewed *de novo*; its factual findings, for clear error. *Id.* (citation omitted).

In ruling on a § 3582(c)(2) motion, the court must determine, pursuant to Guideline § 1B1.10, "whether the prisoner is eligible for a sentence modification and the extent of the reduction authorized". *Id.* (citation omitted). If reduction is authorized, the court must consider any applicable statutory sentencing factors, enumerated in § 3553(a), "and determine whether, in its discretion", the authorized reduction "is warranted in whole or in part under the particular circumstances of the case". *Id.* (citation omitted).

A district court has no obligation to grant a sentence reduction and is not required to explain its application of the statutory sentencing factors in ruling on a § 3582(c)(2) motion. *Id.* at 717–18. "A court satisfies its obligation to review the § 3553(a) factors if it can be determined from the record that it gave due consideration to the motion as a whole, and implicitly to the factors set forth in § 3553(a)." *Id.* at 718 (internal quotation marks and citation omitted).

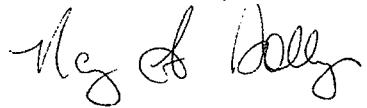
The district judge who originally sentenced Ramirez decided the instant motion for a sentence reduction. The electronic record available to the court

from that sentencing included: Ramirez' objections to the presentence investigation report (PSR); his motion for a downward departure; the Government's response to his PSR objections and downward-departure motion; the judgment, including a 26-page attached memorandum opinion denying his motion for new trial; and our court's opinion describing the evidence, and affirming his conviction and sentence, 145 F. App'x 915 (5th Cir. 2005). Even assuming *arguendo* the court did not consider the transcript to which Ramirez refers, it had access to ample record documents supporting its conclusion in its order denying the motion that "the sentence was appropriate under the dictates of . . . § 3553(a)".

AFFIRMED.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Ms. Carmen Castillo Mitchell  
Mr. Jose Heriberto Ramirez