



**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

No. 19-3368

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**FILED**  
Jun 17, 2020  
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DON NELL HAWKINS,

Defendant-Appellant.

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)  
) ON APPEAL FROM THE UNITED  
) STATES DISTRICT COURT FOR  
) THE NORTHERN DISTRICT OF  
) OHIO  
)  
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)  
)

A M E N D E D  
O R D E R

Before: SILER, ROGERS, and LARSEN, Circuit Judges.

Don Nell Hawkins, a federal prisoner, appeals pro se a district court order granting in part and denying in part his motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(1)(B) and the First Step Act. 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 2007, Hawkins entered a guilty plea to a charge of possession with intent to distribute cocaine base. His career-offender sentencing guideline range was 262 to 327 months of imprisonment, but the sentencing court adopted the government's recommendation set forth in the plea agreement that Hawkins should be sentenced to 240 months, which was also the statutory mandatory minimum sentence. A supervised release term of ten years was imposed. The First Step Act allows the retroactive application of the Fair Sentencing Act of 2010 to sentences imposed

APPENDIX - C

No. 19-3368

- 2 -

before 2010. Applying that Act in this case, Hawkins was subject to a mandatory minimum sentence of 120 months and a minimum supervised release term of eight years. Hawkins therefore filed a motion through counsel for a sentence reduction to time served and eight years of supervised release.

The district court granted the motion in part, reducing the supervised release term to eight years. However, the court denied the motion to reduce the term of imprisonment, noting that the guideline sentencing range remained at 262 to 327 months. On appeal, Hawkins argues that the district court erroneously believed that Hawkins was not eligible for a sentence reduction because the guidelines range was unchanged; that we should therefore review the district court's order de novo; that his original sentence was not based on the guidelines range but on the statutory mandatory minimum; that the district court erred in failing to discuss the other sentencing factors, including post-sentencing history; and that the explanation given by the district court was insufficient for our review. Hawkins also raises a new claim that he is not subject to a career-offender guideline because a prior Ohio conviction is no longer a controlled substance offense, citing *United States v. Havis*, 927 F.3d 382 (6th Cir. 2019) (en banc).

Hawkins cites *United States v. McClain*, 691 F.3d 774, 777 (6th Cir. 2012), for the proposition that we should review the district court's order de novo because the district court believed that Hawkins was not eligible for a sentence reduction where his guideline sentencing range had not changed. However, it does not appear that the district court found Hawkins ineligible for a sentence reduction because it did grant the motion in part, reducing the term of supervised release. Therefore, we do not read the district court as saying it could not—as opposed to would not—reduce Hawkins' sentence under § 404 of the First Step Act. We will review the district court's order for an abuse of discretion. *Id.* at 776.

Hawkins also cites *United States v. Jackson*, 678 F.3d 442, 444 (6th Cir. 2012), for his argument that his original sentence was based on a range other than the career-offender guideline, namely the statutory mandatory minimum. However, in *Jackson*, the sentencing court calculated a lower guideline range and based the sentence on it, thus allowing the conclusion that the sentence was not based on the career-offender guideline. Here, the court simply found that the

No. 19-3368

- 3 -

government's recommendation of 240 months, as contemplated in the plea agreement, was reasonable. The court did not state that it was basing the sentence on the statutory mandatory minimum. Therefore, there was no abuse of discretion in determining that, given the guidelines range of 262 to 327 months, a reduction to time served was not warranted.

The argument that the district court failed to consider other sentencing factors, including post-sentencing history, is not persuasive. The district court used an AO form to explain its decision that stated the court had considered the defendant's motion and the sentencing factors in 18 U.S.C. § 3553(a). Hawkins' motion for a reduced sentence under the First Step Act argued that the court should reduce his term of imprisonment because the 240-month mandatory minimum no longer applies, Hawkins is older, and Hawkins has taken advantage of Bureau of Prisons classes and programs. Accordingly, the form indicates that the district court considered Hawkins' post-sentencing conduct, as this was part of Hawkins' motion and the court did give not any indication that it did not consider this argument or viewed itself as being precluded from considering Hawkins' post-sentencing conduct. *Cf. United States v. Allen*, 956 F.3d 355, 357–58 (6th Cir. 2020).

The argument that this case should be remanded because the district court's explanation of its decision was insufficient is also unpersuasive. A lengthy explanation is not needed where it is clear that the sentence has a reasoned basis. *See Chavez-Meza v. United States*, 138 S. Ct. 1959, 1966–67 (2018); *United States v. Smith*, 958 F.3d 494, 501 (6th Cir. 2020). Here, the district court indicated at the original sentencing proceeding that the agreed below guideline 240-month sentence was reasonable given the criminal history and the seriousness of the offense. The change of the statutory mandatory minimum does not require a different result.

Finally, the new claim attacking a prior conviction as an insufficient predicate offense for career offender status based on a decision of this court may not be raised under 18 U.S.C. § 3582(c)(1)(B), which allows a modification of a sentence only if expressly permitted by statute.

No. 19-3368

- 4 -

For all the above reasons, we **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written above a horizontal line.

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Deborah S. Hunt, Clerk

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. DON NELL HAWKINS, Defendant-Appellant.  
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT  
2019 U.S. App. LEXIS 34087  
No. 19-3368  
November 14, 2019, Filed

**Notice:**

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.**

**Editorial Information: Prior History**

{2019 U.S. App. LEXIS 1} ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO. United States v. Hawkins, 278 Fed. Appx. 629, 2008 U.S. App. LEXIS 11439 (6th Cir.), 2008 FED App. 292N (6th Cir.) (6th Cir. Ohio, May 23, 2008)

**Counsel** For United States of America, Plaintiff - Appellee: Daniel R. Ranke, Assistant U.S. Attorney, Office of the U.S. Attorney, Cleveland, OH.

Don Nell Hawkins, Defendant - Appellant, Pro se, Lisbon, OH.

**Judges:** Before: SILER, ROGERS, and LARSEN, Circuit Judges.

**Opinion**

ORDER

Before: SILER, ROGERS, and LARSEN, Circuit Judges.

Don Nell Hawkins, a federal prisoner, appeals pro se a district court order granting in part and denying in part his motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(1)(B) and the First Step Act. 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 2007, Hawkins entered a guilty plea to a charge of possession with intent to distribute cocaine base. His career-offender sentencing guideline range was 262 to 327 months of imprisonment, but the sentencing court adopted the government's recommendation set forth in the plea agreement that Hawkins should be sentenced to 240 months, which was also the statutory mandatory minimum sentence. A supervised release term of ten years was imposed. The First Step Act allows the retroactive application {2019 U.S. App. LEXIS 2} of the Fair Sentencing Act of 2010 to sentences imposed before 2010. Applying that Act in this case, Hawkins was subject to a mandatory minimum sentence of 120 months and a minimum supervised release term of eight years. Hawkins therefore filed a motion through counsel for a sentence reduction to time served and eight years of supervised release.

The district court granted the motion in part, reducing the supervised release term to eight years.

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APPENDIX-A

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However, the court denied the motion to reduce the term of imprisonment, noting that the guideline sentencing range remained at 262 to 327 months. On appeal, **Hawkins** argues that the district court erroneously believed that **Hawkins** was not eligible for a sentence reduction because the guidelines range was unchanged; that we should therefore review the district court's order de novo; that his original sentence was not based on the guidelines range but on the statutory mandatory minimum; that the district court erred in failing to discuss the other sentencing factors, including post-sentencing history; and that the explanation given by the district court was insufficient for our review. **Hawkins** also raises a new claim that he is not subject to a {2019 U.S. App. LEXIS 3} career-offender guideline because a prior Ohio conviction is no longer a controlled substance offense, citing *United States v. Havis*, 927 F.3d 382 (6th Cir. 2019) (en banc).

**Hawkins** cites *United States v. McClain*, 691 F.3d 774, 777 (6th Cir. 2012), for the proposition that we should review the district court's order de novo because the district court believed that **Hawkins** was not eligible for a sentence reduction where his guideline sentencing range had not changed. However, it does not appear that the district court found **Hawkins** ineligible for a sentence reduction because it did grant the motion in part, reducing the term of supervised release. Therefore, we will review the district court's order for an abuse of discretion. *Id.* at 776.

**Hawkins** also cites *United States v. Jackson*, 678 F.3d 442, 444 (6th Cir. 2012), for his argument that his original sentence was based on a range other than the career-offender guideline, namely the statutory mandatory minimum. However, in *Jackson*, the sentencing court calculated a lower guideline range and based the sentence on it, thus allowing the conclusion that the sentence was not based on the career-offender guideline. Here, the court simply found that the government's recommendation of 240 months, as contemplated in the plea agreement, was reasonable. The court did not state that it was basing the sentence on the statutory {2019 U.S. App. LEXIS 4} mandatory minimum. Therefore, there was no abuse of discretion in determining that, given the guidelines range of 262 to 327 months, a reduction to time served was not warranted.

The argument that the district court should have considered other sentencing factors, including post-sentencing history, is not persuasive. In *Dillon v. United States*, 560 U.S. 817, 831, 130 S. Ct. 2683, 177 L. Ed. 2d 271 (2010), the Supreme Court determined that, when deciding a motion to reduce sentence under 18 U.S.C. § 3582(c)(2), aspects of the original sentencing decision not affected by the changed guidelines range are outside the scope of the proceeding. The same logic applies here. The argument that this case should be remanded because the district court's explanation of its decision was insufficient is also unpersuasive. A lengthy explanation is not needed where it is clear that the sentence has a reasoned basis. See *Chavez-Meza v. United States*, 138 S. Ct. 1959, 1966, 201 L. Ed. 2d 359 (2018). Here, the district court indicated at the original sentencing proceeding that the agreed 240-month sentence was reasonable given the criminal history and the seriousness of the offense. The change of the statutory mandatory minimum does not require a different result.

Finally, the new claim attacking a prior conviction as an insufficient predicate offense for career offender status based {2019 U.S. App. LEXIS 5} on a decision of this court may not be raised under 18 U.S.C. § 3582(c)(1)(B), which allows a modification of a sentence only if expressly permitted by statute.

For all the above reasons, we **AFFIRM** the district court's order.

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

United States of America

v.

Don Nell Hawkins

FIRST STEP ACT OF 2018

Case No: 5:06CR505-001

USM No: 53703-060

Date of Original Judgment: 05/01/2007

Date of Previous Amended Judgment:

(Use Date of Last Amended Judgment if Any)

Vanessa Malone, FPD

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)

Defendant's Motion to Reduce Sentence Under Section 404 of the First Step Act is GRANTED only to the extent the defendant's term of supervised release is reduced to eight years. In that his guideline range remains the same, the sentence of 240 months stands.

Except as otherwise provided, all provisions of the judgment dated 05/01/2007 shall remain in effect.

IT IS SO ORDERED.

Order Date: 04/12/2019

Patricia A. Gaughan

Judge's signature

Effective Date: \_\_\_\_\_  
(if different from order date)

Chief Judge Patricia A. Gaughan, U.S. District Court Judge

Printed name and title

APPENDIX - B