No. 20-7694

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

Eusebio Escobar-De Jesús, Petitioner

vs.

United States of America, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES APPEAL COURT FOR THE FIRST CIRCUIT

PETITION FOR WRITE OF CERTIORARI

Eusebio Escobar-De Jesús / Reg No. 03903-069

Federal Correctional Institution
PO Box 420
Fairton, New Jersey 08320

Phone Number: Jeremias 33:3

QUESTIONS PRESENTED

1. Whether the First Circuit erred in affirming the denial of Petitioner's Motion for Compassionate Release under the First Step Act, which the District Court analyzed under 18 U.S.C. § 3582 (c)(2), while the Fourth and Second Circuits hold that such Compassionate Release Motions are to be analyzed under 18 U.S.C. § 3582 (c)(1)(A).

2. Whether the District Court violated the Fifth Amendment's Due Process Clause, when it did not quote or analyze the text of the First Step Act or cite any cases that addressed Motions for Compassionate Release filed pursuant to the First Step Act.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASE

United States v. Escobar De Jesús, 187 F. 3d 148, 159 N. 5, 6 (1999).

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLES OF AUTHORITIES

Page

TABLES OF STATUTES AND RULES

IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States Court of Appeals appear at Appendix A to the petition and has been designated for publication but is not yet reported.

The opinion of the United States District Court appears at Appendix B to the petition and is reported at if not opinion denied, same Appendix B.

JURISDICTION

The date on which the United States Court of Appeals decided my case was July 23, 2020. AND JANUARY 21, 2021 APPENDIX

A timely petition for rehearing was denied by the United States Court of Appeals on August 13, 2020 and a copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment of the Constitution.
2. The Sixth Amendment of the Constitution.

STATEMENT OF THE CASE

Following a jury trial in the United States District Court for the District of Puerto Rico, Petitioner was convicted on one count of engaging a continuing criminal enterprise (CCE), in violation of 21 U.S.C. 848(a) and (c); two counts of assaulting a Customs Service officer with a deadly weapon, in violation of 18 U.S.C. § 111(a)(1); one of possessing a machine gun, in violation of 18 U.S.C. § 922(o)(1); one count of aiding and abetting the possession of 80 kilograms of cocaine with the intent to distribute it, in violation of 21 U.S.C. § 841(a)(1); three counts of aiding and abetting interstate travel with the intent to promote unlawful activity, in violation of 21 U.S.C. § 1952; one count of causing an international killing while engaged in a CCE, in violation of 21 U.S.C. § 848(e); two counts of being a felon in possession of a firearm, in violation of 21 U.S.C. § 922 (g)(1); four count of using a communications device to facilitate the importation of cocaine, in violation of 21 U.S.C. §843(b); and o ne count of aiding and abetting an attempt to import 320 kilograms of cocaine, in violation of 21 U.S.C. §952, 960 and 963. Petitioner was sentenced to life imprisonment. The Court of Appeals affirmed. United States v. Escobar-De Jesús, 187 F.3d 148, 157 and n.1 (1st Cir. 1999), cert. denied, 528 U.S. 1176 (2000).

On May 14, 1993... it should be April 14, defendant Eusebio Escobar-De Jesús was found guilty as to counts 1, 5, 6, 7, 10, 11, 12, 15 through 20, both inclusive, 23, 24 and 33 of the indictment in criminal case 90-130, which charge a series of violations, including Section 848(a) and (c) of Title 21, Section 848(e)(1)(A), Section 963, 841(a)(1), 843(b), all of Title 21 and Title 18 United States Code section, 111A, and B, 1114, 922(g)(1), 922(o), 1952 A-3, and B-1, and 2.

Based on the fact that the nature of the overall offense conduct involved a continuing criminal enterprise, the provisions of the United States Sentencing Guidelines

Section 2D1.5 establish that the appropriate base offenses level of the underlying drug offense. S.H.T.P. 27-28.

The court grouped together all counts of conviction include the murder convictions under 21 U.S.C. § 848(e) which the court treated together because the total offense level of group 2 really is non-consequential for the purpose of the sentence. S.H.T.P. 13. Under the Sentencing Guidelines § 2D1.5, the offense level for Petitioner's murder conviction was 43 S.H.T.P. 27, 30. Under Guidelines § 2D1.5, the offense level for violation of Section 848(a) was four plus the offense level for the underlying drug offense--i.e., his convictions under 21 U.S.C. 841(a), 843(b) and 963--was 44. Because 500 to 1500 kilograms of cocaine were involved the base offense level for violating 21 U.S.C. §841(a), 843(b) and 963 was 40. S.H.T.P. 28; see Sentencing Guidelines 2D1.5 (1989).

The possession of a dangerous weapon during a drug offense and the use of an aircraft other than a regularly scheduled commercial flight resulted in an additional four level increase, resulting in a base offense level of 48 for the Section 848(a) offense treated together. S.H.T.P. 13, 27, under Guideline 2D1.5.

REASON FOR GRATED THE RIGHT OF CERT.

The Nature of the Split.

Rule 10. Considerations governing review on certiorari - A United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter.

In United States v. Wirsing, 943 F. 3d 175, 182-8 N.3 (4th Cir. 2019); hod that (1) the District Court erred in analyzing defendant's Motion under 18 U.S.C. § 3582(c)(2) and should have instead used 18 U.S.C. § 3582(c)(1)(A) and defendant statute-of-conviction

theory of eligibility is correct because defendant is eligible if seek relief under the First Step Act should be remanded to the District Court to consider defendant's Motion to Impose a Reduced Sentence. The District Court did not quote on analyze the text of the First Step Act or cite any cases that had addressed First Step Act Motions. The Court also did not teach the question of whether, in its discretion, it would grant relief to defendant's if he was eligible.

In United States v. Holoway, 956 F. 3d 660, 665, N. 8 (2nd Cir. 2020) holding that the First Step Act Motion, however, is not properly evaluated under 18 U.S.C. § 3582(c)(2). That provision applies only if the defendant seeks a reduction because he was sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the sentencing commission pursuant to 28 U.S.C. § 994(o), i.e, a change to the sentencing guidelines. But a First Step Act Motion is based on the act's own explicit statutory authorization, rather than on any action of the sentencing commission. For this reason, such a motion falls within the scope of § 3582(c)(1)(B) which provides that a "court may modify an imposed term of imprisonment to the reduction compor with USSG § 1B1.10 or any other policy statement, and thus the defendant's eligibility turns only on the statutory criteria discussed above. Accordingly, Holloway was eligible for a reduction in his term of imprisonment, and the District Court erred in denying his motion.

In so holding the Second Circuit agree with the other Courts of Appeals to have thus far addressed this question. Id. Note 8.

REASONS FOR GRANTING THE PETITION

See United States v. Torres, 2020 U.S. Dist. Lexis 95393 for the Southern Dist. of New York, at PE 31-33 (2020). The court may thus consider the full merits of their request,

including their claim that the pandemic provides another reason for a sentence reduction.

United States vs. Juan Ledesma-Rodríguez, 2020 WL 3971517, Southern District of Iowa, August 22, 2020 Compassionate Release using Hollowar Doctrine plus COVID-19 pandemic.

United States v. Patnick M. V. Igneaw, 2020 WL 4345105, for the Dist. of Rhode Island, August 22, 2020, using Booker vs. United States, as an extraordinary and compelling circumstance.

At the outset, a sentencing modification authorized under the First Step Act occurs under 18 U.S.C. § 3582(c)(1)(A) rather than 18 U.S.C. § 3582(C)(2), The Fifth Circuit recently observed that a district court should "Plac[e] itself in the time frame of the original sentencing, altering the Relevant Legal Landscape only by the changes mandated by the 2010 Fair Sentencing Act." United States v. Hegwood, 934 F. 3d 414, 418 (5th Cir. 2019) (emphasis added). In conflict with the Second and Third Circuits.

United States v. Zullo, No. 19 cr. 3218 (2nd Cir., Sept. 25, 2020, Lexis 30605 (2020). The Second Circuit holdings that USSG § 1B1.13 does not apply to post-First Step Sentence Reduction Motion. "Application Note 4," the Second Circuit ruled, "says that [a] reduction under this policy statement may be granted 'only' upon Motion by the Director of the BOP pursuant to 18 U.S.C. § 3582(c)(1)(A).

If a compassionate release motion is not brought by the BOP Director, Guidelines § 1B1-13 does not by its own terms, apply to it. [Same Escobar case], because guideline § 1B1.13 is not "applicable" to compassionate release motions brought by defendants.

STATEMENT OF THE FACTS

On April 19, 2019 the Petitioner filed a Motion for Compassionate Release in Criminal Case No. 90-130 (PG) based on 18 U.S.C. § 3582(c)(1)(A), following changes there to after the enactment of the First Step Act, pub. L. No. 115-391, 135 stat. 5239 (2018) (DE 1306-1307-1310). On August 23, 2019 the District Court ordered the Government to respond to Escobar's Motion for Compassionate Release (DE 1308). The Government filed its response on August 30, 2019. (DE 1309). The District Court entered and ordered denying Escobar's motion succinctly citing its basis for denial as the reasons set forth in the Government's brief. In opposition, "for the reasons stated at ECF No. 1309, defendants request is denied" (DE 1313). Thereafter, Escobar filed a notice of appeal, and the appeal ensured. (DE 1314).

The Government filed brief in Appeal No. 19-2210; its opposition was basis at pages 17, 18, 23, 28, 35 under 18 U.S.C. 3582(c)(2), including the standard of review instead 18 U.S.C. § 3582 (c)(1)(A) was the appropriate vehicle for First Step Act motion. The appeals Court entered a judgment on July 23 denying his properly exhausted motion to reduce sentence under the First Step Act of 2018 and 18 U.S.C. § 3582(c)(1)(A). In its only argument preserved for appeal.

The defendant's additional "Emergency Motion" for compassionate release on COVID-19 grounds is denied without prejudice to a procedurally appropriate request before the Bureau of Prisons or District Court.

On August 4, 2020 Escobar timely filed petition for rehearing *En Banc* under CFRAP 35 and 40. Contains (1) a material factual legal matter was overlooked; (2) the case involves one or more questions of importance. On August 13, 2020 entered the Foral

Mandate of the Court stated: "The mandate issued on August 12, 2020 is hereby vacated as if was issued in error.

The government is clearly erroneous when relying in United States v. Hamilton, 715 F.3d 328, 337 (11th Cir. 2013). That contention strikes as clearly erroneous because that case dealt with career offender and amendment to the guidelines. The Eleventh Circuit rejected the government contention in United States vs. Berry, 701 F. 3d 374, 377 (11th Cir. 2012). Additionally, Escobar submits the government's citing of Dillon vs. United States, 560 U.S. § 817, 827 (2010), and other cases from the Second and Eleventh Circuits, concerning retroactivity of a guideline amendment, further reveals its lack of comprehension of the intended application of this new legislation as the relief provided in Section 602(b)(1) of this new First Step Act, which was enacted to "increase the use and transparency of the compassionate release" and has yet to be incorporated into the United States Sentencing Guidelines and thus is not available through a guideline amendment.

Accordingly, Dillon and other case is cited by the government and likely relied on by the District Court as instructive are in fact inapposite.

The plain text of subsection 603(b)(1) gives the court authority to conduct a full resentencing (unlike Section 3582(c)(2) motions), in the defendant's presence. First, Section 572.40 give the court discretion to "impose" a reduced sentence at any length consistent with Section 841(b)(1)(A) and (b)(1((B), without limitations on what the court may consider. See Section 572.40.

Second, Section 572.40 gives the court jurisdiction to "impose" a reduced sentence. (emphasis added). Congress' choice of the verb "impose", instead of "modify" or "reduce" is significant. Federal sentencing statutes use the verb "impose" to mean "sentence" in light of all relevant factors. See e.g. 18 U.S.C. § 3553(a) ("The court shall impose a sentence

sufficient, but not greater than necessary, to comply with the purposes seth forth in paragraph (2) of t his section."); Section 3553(a)(2) ("directing courts to consider "the need for the sentence imposed in light of the purposes of sentencing"); Section 3553(c) ("Statement of reason for imposing a sentence. The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence") because of "identical words... are intended to have the same meaning, the Act's use of the verb "impose" directs a resentencing. See also Fed. R. Crim. P. 32(b)(1) using verb "imposing") all unlike a motion filed under Section 3582(c) using the words "modification of impos(ed) term of imprisonment." See United States v. Berry, 701 3d 374, 377 (11th Cir. 2012), rejecting the defendant's argument that he was eligible for a Section 3582 reduction under (FSA) determining that "the (FSA) is not a Guidelines amendment by the Sentencing Commission, but rather a statutory change by Congress, and thus it does not serve as a basis for a Section 3582(c)(2) reduction in the Defendant's case. Id. Finally, Section 572.40 authorizes courts to conduct a resentencing.

Section 603 of the First Step Act amended 18 U.S.C. 3582(c)(1)(A)(i) including the following "default clause":

> "...or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf, or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier."

Mr. Escobar handed his request to prison staff, to be delivered to the warden of this facility, on June 1, 2020. Therefore, as of October 2020, with no response received from the warden, the criteria above has been satisfied and this Court has proper jurisdiction to hear this request.

See, Houston v. Lack, 487 U.S. 266 (1988) (establishing "prison mailbox rule" for pro se prisoner; once a document is delivered to prison staff, that document is deemed filed).

Having met all of the criteria for a request for relief under this new legislation, and satisfying the "exhaustion of remedies" requirement, Mr. Escobar now submits his request to the Supreme Court.

In addition to the information contained in the petition filed with the warden of his facility, which is included here, Mr. Escobar would note that in subsection (a)(5), clauses (i) and (ii) of Section 603,the age and term of imprisonment completed has been modified from 65 to 60 years of age, and from 75% to 2/3 of the term imposed.

Under the (mandatory) U.S. Sentencing Guidelines in effect at the time of Mr. Escobar's sentencing, a term of Life was quantified to 470 months, which is the equivalent of 39.1 years.

Without the addition of any "good time credits", Mr. Escobar has now served a total of 30.6 years, which is 4.6 years over the 26.1, or 2/3 of his sentence.

Based on these facts, and the criteria in the First Step Act as set forth herein, Mr. Escobar asks this Honorable Court to grant his Request for Compassionate Release, and prays that it will be granted.

Argument One.

Comes now the petitioner, Eusebio Escobar-De Jesús, pro se comes before this Honorable Court, with the instructions of the Appeals Court judgment: The defendant's "Emergency Motion", for compassionate release on COVID-19 grounds is denied without prejudice to a procedurally appropriate request before the Bureau of Prisons or District Court. See Appendix A and D. The petitioner has been infected with the virus COVID-19

and presumed to contagious and the life of the petitioner is in risk to die. See United States v. Torres, 2020 U.S. Dist Lexis 95393 at pg 31-33, for the Souther Dist. of New York (2020). Holding that, the District Court may consider the full merits of their request, including their claim that the pandemic provides another reason for a sentence reduction. And this case, the state of Fairton, New Jersey, where the Torres Brothers, petitioner Escobar has been housed and moves this Supreme Court, in light of Torres case it's the same statute 21 U.S.C § 848(a) and (b) uncharge and the same institution.

COVID-19 Pandemic Presents Extraordinary and Compelling Reason.

The ongoing COVID-19 pandemic provides reason for Escobar's release. The Centers for Disease Control and Prevention (CDC) has recognized older adults and people of any age who have serious underlying medical conditions might be and high risk for severe illness from COVID-19. Among those considered by the CDC to be high risk are individuals older than sixty-five and those with underlying health conditions, including heart conditions and diabetes.

Here, Escobar is 71 years old and currently suffers from prostate cancer, high blood pressure and glaucoma, three conditions that place him at a greater risk of severe illness from COVID-19. His age and health weight in favor of a sentence reduction given the ongoing pandemic.

Recently, the U.S. District Court for the Southern District of New York recognized these same factors in reducing Jorge and Víctor Torres' sentences. The Torres brothers were serving their 33rd year of life sentences. See U.S. v. Torres, 2020 U.S. Dist. Lexis 9539 (S.D.N.Y., June 1, 2020). Escobar has also served more that thirty years of his life sentence. Like Escobar, the Torres brothers were also housed at FCI Farton on similar

charge with similar sentences. Escobar requests this Court to follow the Torres Court's reasoning to avoid under disparity among similar situated inmates.

The Torres Court cites several cases to support that given these circumstances there can be no question that the COVID-19 pandemic presents an extraordinary and unprecedented thread to incarcerated individuals. Id. At Lexis 31. That Court also recognized that there is a good argument that realistically the best, perhaps the only way to mitigate the damages and reduce the death toll is to decrease the prison population by releasing as many people as possible. Id. At Lexis 33.

In sum, Escobar presents that the totality of his circumstances provide "extraordinary and compelling reasons" for a sentence reduction. See also of the recent Second Circuit case in United States v. Eric Millán, (No. 91-CR-685, LAP), for the Sourthern District of New York, April 6, 2020) applicable to the petitioner's argument under 18 U.S.C. § 3582(c)(1)(A)(i) and 21 U.S.C. § 848(b). The (same).

Petitioner's statement of jurisdiction, facts and statement of the case are placed before this Court in petitioner's original brief and appellant brief, and therefore, will not be again relitigated herein.

This Court has the authority to release the petitioner in response to the worldwide, COVID-19 pandemic, to time served pursuant to 18 U.S.C. § 3582(c)(1)(A). That section provides that District Court can modify a "final term of imprisonment" if "extraordinary and compelling reasons warrant such a reduction." Three points bear nothing with regards to the operation of 18 U.S.C. § 3582(c)(1)(A). First in passing the statute, Congress empowered District Courts, not the U.S. Parole Commission, as previously, to decide in individual cases if "there is a jurisdiction for reducing a term of imprisonment." Se S. Rep.

No. 98-225, at 56 (1983). Put differently, Congress envisioned 18 U.S.C. § 3582(c)(1)(A) acting as a "safety valve [ ] for [the] modification of sentences and intended for District Court to be able to reduce sentences when justified by the various factors and reasons that the U.S. Parole Commission previously had considered in making parole determinations.

Second, although the power to reduce sentences provided for by 18 U.S.C. § 3582(c)(1)(A) has most often been used to reduce the prison terms of elderly and/or terminally ill defendants, nothing in the statutory language or legislative history of 18 U.S.C. § 3582(c) indicates that Congress intended to limit its application to elderly defendants or defendants with compelling medical circumstances. Rather, if a judge finds the existence of any "extraordinary and compelling reasons" warranting a sentence reduction. Those reasons could, pursuant to 18 U.S.C. § 3582(c)(1)(A), form the legal basis for the reduction "of an unusually long sentence." Id. at 55-56.

The [Sentence Judiciary] Committee believes that there may be unusual cases [like Millán, Escobar's] in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances. These would include cases of sever illness, cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence, and some cases in which the sentencing guidelines for the offense of which the defendant was convicted has been later amended to provide a shorter term of imprisonment. Id. At 55-56 (1983).

Third, in late 2018, Congress passed the First Step Act, which, among other things fundamentally transformed the process by which 18 U.S.C. § 3582(c)(1)(A) sentence reduction motions are adjudicated. As a defendant first files a request for a sentence reduction motion with the warden of the facility in which s/he is being held that is rejected of the lapse of 30 days "from the receipt of such a request by the warden of the

defendant's facility", whichever happens first. See, United States v. Millán, Case No. 91-CR-685(LAP), Southern District of New York, April 6, 2020 ("Among other things [the First Step Act] add[s] a provision allowing courts to consider motion by defendants for compassionate release without a motion by the BOP Director so long as the defendant has asked the Director to bring such a motion the Director fails or refuses.").

Thus, once a defendant files an 18 U.S.C. § 3582(c)(1)(A) sentence reduction motion after the occurrence of either of the two foregoing events, a district court may reduce that defendant's sentence to time served (or any other prison term short of the initial sentence) if it finds that: (1) "extraordinary and compelling reasons" exist for a sentence reduction after considering the 18 U.S.C. § 3553(a) factors; and (2) ("thus courts may, on motions by defendants, consider whether a sentence reduction is warranted for extraordinary and compelling reasons other than those specifically identified in the application notes to the old policy statement"), and courts have utilized that power. See, United States v. Eric Millán, "supra", is instructive with regards to court's newfound authority to reduce sentence based on "extraordinary and compelling reasons."

EXTRAORDINARY AND COMPELLING REASONS

IN SUPPORT OF THE REDUCTION OF MR. ESCOBAR'S

LIFE SENTENCE TO TIME SERVED

To date, Mr. Escobar has served more than thirty years of the life sentence imposed by Judge Pérez-Giménez, of in legal sentence in 21 U.S.C. § 848(b), instead of 21 U.S.C. § 848(a), which carried a twenty to Life; Mr. Escobar has done everything in his power to rehabilitate himself, as demonstrated the most important accomplishment [to repent and conversion to being a Christian for the past twenty-one years]; and meritorious prison

records, classified by the BOP to be in medium custody. Among other things, Mr. Escobar successfully completed dozens of BOP rehabilitative programs, including drug program. He also worked hard in the Unicor-Federal Prison Industries Factory. The list of programs is long. See case manager recommendation and the psychology services department by Kennedy, B., PSYD, stating: "He has reported approximately twenty years, into day is twenty-five years of sobriety and his disciplinary record largely supports his claim.[1] Id. At pg. 33 in the original motion in the District Court.

Mr. Escobar, extraordinary rehabilitation together with his petition in response to the worldwide COVID-19 pandemic, all constitute extraordinary and compelling reasons justifying a reduction in and compelling reasons justifying a reduction in sentence.

Accordingly, for all of the foregoing reasons, pursuant to 18 U.S.C. § 3582(c)(1)(A), the motion should be granted.

Argument Two.

The Government on appeal brief at pages 18-19 states: A. Escobar does not qualify for a sentencing reduction under 18 U.S.C. § (c)(A)(ii).

As a matter of law, Escobar does not qualify for a sentencing reduction under Section 3582(c)(1)(A)(ii) because he fails to meet the requisite statutory thresholds. Escobar is less than seventy years of age and has not served at lease thirty years in prison (DE 1307-5). There is nothing on the record indicating the director of BOP has made a safety determination about Escobar. (DE 1306, 1307, 1310). Thus, Escobar does not qualify for a sentencing reduction under this prior First Step Act subsection Id. pg 19.

---

[1]See, United States v. Torres, U.S. Dist. Lexis 95393, for the Southern District of New York, June 1, 2020, No. 87-CR-593 (SHS). The Court may, thus, consider the full merits of their request, including their claim that the Pandemic provides another reason for a sentence reduction, its instructive of the Petitioner's case. Torres, case in the State of New Jersey, where the same place the Petitioner is being housed. 18 U.S.C. § 3553(a)(6).

The court may reduce the term of imprisonment after considering the factors set forth in Section 3553(a) to the extent that they are applicable, if the court finds "(i) extraordinary and compelling reasons warrant such a reduction" or (ii) if the defendant is seventy years in prison for a sentence imposed under Section 3559(c) for the offense(s) for which the defendant is currently imprisoned, and the director of the Bureau of Prisons makes a determination that the defendant of the Bureau of Prisons makes a determination that the defendant is not a danger to the safety of others. 18 U.S.C. § 3582(c)(2).

If the District Court finds one of those two elements are not (namely, that there are either extraordinary and compelling reasons in (i), or that the defendant has met the age and sentence threshold of (ii) the court may reduce the term of imprisonment only "if such a reduction is consistent with applicable policy statements issued by the sentencing Commission." 18 U.S.C. § (c)(1)(A); See Dillon v. United States, 560 U.S.: 817, 821 (2010). In determining whether or not to reduce a sentence pursuant to § 3582(c)(2), the District Court conducts a two-par inquiry. United States v. Candelaria-Silva, 714 F. 3d 651, 656 (1st Cir. 2012) (citing Dillon, 560 U.S. at 827). Id. Gov. Opp. Pg. 17-19); Id. quoting the Gov.).

Petitioner renew his request for reduction of sentence in this argument for the reasons as following:

(1) The petitioner's date of birth is September 13, 1949,. Now he has more than seventy-one years of life; (2) petitioner has served more than thirty years plus good time for a total of thirty-five years; (3) the records of the BOP has made an evaluation and classification from maximum on rehabilitation programs and good conduct. Furthermore, the psychology department regarding a review of Escobar has not presented any mental health difficulty during two separate terms of incarceration within the Bureau of Prisons

beginning in 1986, and psychology department stated that: "he has reported approximately twenty years of sobriety and his disciplinary record largely (Dr. Kennedy, B. Psyd.) Supports his claim. See, (DE 1306, p. 13). Also, accordingly, the BOP, Warden (Government) waived and forfeited any entitlement to respond a safety determination about Escobar, because that concern not exist. See, Section 603(b)(1)a - Default Clause.

He has taken every available class and program (See exhibits Inmate Education Data Transcript) in an effort to expand his knowledge and strengthen his resolve in pursuit of the peace of mind that seems so exclusive in this environment. In the process he has been a mentor to many younger inmates. He has helped many of them change their self-destructive lifestyles, improve their mindset and steered them down a more productive path and attempted to prepare them for the day of their release.

As for his own personal conduct in prison, he has never committed a violent act against another, or had any involvement in such an act. In fact, he now has twenty-one years of "incident free" conduct, an "accomplishment" in this environment to which few inmates can claim.

In sum, when considering that he now has been imprisoned (for more than thirty years) more than a decade beyond the maximum term he would face if sentenced today in the same court for the very same offenses, and that his sentencing judge would have needed a crystal ball to have foreseen these changes in the judicial process, Escobar would submit to the warden that these facts are indeed "particularly extraordinary and compelling" and now warrant relief in his case. See Appendix E.

The Government open this argument in appeal and the Appeals Court rejecting because the only argument preserved for appeal, the motion requested compassionate release because the defendant time served purportedly exceeds any term that could be

imposed if he were being sentenced today in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), two other Apprendi-themed decisions; and certain sentencing changes wrought brought by the First Step Act.

The petitioner committed an error to cite Apprendi instead of citing Alleyne v. United States, 186 L. Ed 2d 314 (2013); was the appropriate vehicle for a First Step Act Motion, because Apprendi deal with the minimum mandatory sentence instead Alleyne deals with the maximum mandatory sentence, like Escobar, 21 U.S.C. § 848(b). The finality of this agreement two was never was preserved in the District Court should it address this argument appropriate request before the Bureau of Prisons. See Appendix E.

FAMILY HISTORY AND PROPOSED RELEASE PLAN

Over the past thirty plus years, and add five years good time for a total of thirty-five year of his imprisonment, Escobar has suffered the lose of his dear mother. Among his supporters are children, grandchildren, cousins and multiple christian churches and to testify, if this Honorable Court conducting a hearing in this case. See Exhibits and the package that case manager Velázq1uez has put together for his purpose before this court in the prior petition. And because of the lapse of thirty years from the receipt of the request by warden, this request should be granted under 18 U.S.C. § 3582(c)(1)(A)(ii) and 4205(G).

The sentencing court may reduce the sentence in particularly extraordinary and compelling circumstances, which could not reasonably have been foreseen by the court at the time of his sentencing in this case.

CONCLUSION

Mr. Escobar extraordinary petition, together with his petition to have been infected with the virus of COVID-19 pandemic, all constituted extraordinary and compelling reasons justifying a reduction of sentence. Accordingly, for all of the foregoing reasons, pursuant to 18 U.S.C. § 3582(c)(1)(A) instead 3582(c)(2), Eusebio Escobar-De Jesús motion should be granted.

Respectfully submitted,

Eusebio Escobar Jesus

MARCH 15/2021
date