

A P P E N D I X A

Sentencing Transcripts

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 SHERMAN DIVISION

4 UNITED STATES OF AMERICA : DOCKET NO. 5:13CR22
5 VS. : : :
6 DARRIN LASHAON BETTS : TEXARKANA, TEXAS
7 : JANUARY 28, 2015
8 : 11:10 A.M.

9 :
10 SENTENCING HEARING
11 BEFORE THE HONORABLE MICHAEL H. SCHNEIDER,
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 FOR THE GOVERNMENT: MR. RYAN LOCKER
15 U.S. ATTORNEY'S OFFICE
16 110 N. COLLEGE, SUITE 700
17 TYLER, TEXAS 75702

18 FOR THE DEFENDANT: MR. JOHN R. TEAKELL
19 ATTORNEY AT LAW
20 2911 TURTLE CREEK, SUITE 300
21 DALLAS, TEXAS 75219

22 COURT REPORTER: MS. JAN MASON
23 OFFICIAL REPORTER
24 U.S. DISTRICT COURTHOUSE
25 101 E. PECAN
 SHERMAN, TEXAS 75090

26 PROCEEDINGS REPORTED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
27 PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

1 THE COURT: Thank you. Please be seated.

2 Court calls Case No. 5:13CR22. The matter is styled
3 United States of America versus Darrin Lashaon Betts. I'm
4 going to ask that we get started by having an announcement
5 of the parties, beginning with the Government and then we'll
6 move over to the Defendant.

7 MR. LOCKER: Thank you, Your Honor. Ryan Locker on
8 behalf of the Government and I'm ready to proceed with
9 sentencing.

10 MR. TEAKELL: Good morning, Your Honor. John Teakell
11 for Mr. Betts. We're ready.

12 THE COURT: Good morning, sir. Sir, are you the same
13 Darrin Lashaon Betts who entered a plea of guilty on July 10,
14 2014?

15 MR. DARRIN BETTS: Yes, sir.

16 THE COURT: All right, sir. At that time Judge
17 Craven took your plea of guilty and recommended that I find you
18 guilty, and I followed her recommendation on August 4, 2014,
19 and formally found you guilty, which triggered at that time an
20 investigation by the Probation Department. They have now
21 completed that investigation and issued a couple of reports.

22 The report I'm working from is dated October 1, 2014.
23 I'm going to ask the -- that's the revised report. How does
24 that stack with your records, Mr. Locker?

25 MR. LOCKER: That's the same as I'm referring to,

1 Your Honor.

2 THE COURT: Mr. Teakell?

3 MR. TEAKELL: Yes.

4 THE COURT: All right. Have you had an opportunity
5 to go over that report with Mr. Betts? And if you have, I
6 would like for you to address your communication with him to
7 the extent of understanding what is in that report and also
8 there are some conditions in there listed for his -- his
9 supervised release. I would like for you to make a record of
10 your communications with him about those to make sure that he
11 understands all of those and agrees with everything, except for
12 the matter that we'll deal with later here on the objection.

13 MR. TEAKELL: Yes, Your Honor. Yes, I have
14 communicated with Mr. Betts by phone and in person in regard to
15 the Presentence Report. He did receive a separate copy from me
16 and we have discussed it more than once and he understood.

17 As the Court sees, I did file some objections based on
18 communications with Mr. Betts. And just as a side note,
19 obviously we are hoping the Court accepts the agreement and
20 we realize that the objection, even though it may affect the
21 guideline calculations, is really not going to have an
22 effect on the 11(c)(1)(C). Nonetheless, we made the
23 objection.

24 I don't want to belabor it, but the point is that's the
25 part of -- those came from my discussions with Mr. Betts

1 about the Presentence Report. He has also seen the addendum
2 and he, as I understand it, with the exception of the
3 objection, accepts the report.

4 THE COURT: All right. Mr. Betts, did you hear,
5 understand and agree with everything Mr. Teakell just told me?

6 MR. DARRIN BETTS: Yes, sir.

7 THE COURT: Do you believe you understand the report?

8 MR. DARRIN BETTS: Yes, sir.

9 THE COURT: And do you -- I see that you have one
10 objection here and I'm going to be dealing with that later, but
11 you understand you have the right to make other objections to
12 the report?

13 MR. DARRIN BETTS: Yes, sir.

14 THE COURT: All right, sir. One other thing is that
15 do you understand if I impose a sentence of supervised release
16 as part of your sentence that there are certain conditions that
17 you will be subject to? Do you understand all those conditions
18 as set out in your Presentence Report?

19 MR. DARRIN BETTS: Yes, sir.

20 THE COURT: All right, sir. Well, let's take a look
21 at those objections. Let me just -- to save people having to
22 make a total record on it, I have read these objections -- this
23 objection. It's to paragraph 16 and I believe it's on page
24 five. The Defendant objected to paragraph 16, which added two
25 levels to the base offense level for a firearm being possessed

1 in conjunction with this particular offense. He argued that
2 the residence did not belong to him and denied ever spending
3 any time in a particular bedroom where the firearms were
4 recovered.

5 The probation officer then filed their response, which
6 basically said that the confidential informant identified
7 the residence in question as a residence that was utilized
8 by the Defendant.

9 Also, additionally, the agents observed the Defendant
10 coming and going from the residence just prior to the
11 execution of the search warrant on the residence and then
12 made the point that a firearm is a commonly used tool of the
13 drug trafficking trade and it was reasonably foreseeable
14 that the Defendant would use the firearm during and in
15 preparation of the course of the offense.

16 Now, I would state that among the inventory found were
17 a lot of instrumentalities for those things consistent with
18 drug trafficking. I just point those things out.

19 Now, the AUSA, Mr. Locker, responded that the residence
20 was leased exclusively to the Defendant and only one room in
21 the residence was furnished as a bedroom and the -- also, he
22 states that the agents located clothes and shoes in the
23 Defendant's size in the closet of that same bedroom, and the
24 handgun in question was also located in the bedroom.

25 The agents also located a photo of the Defendant

1 standing in front of a truck. Now, this truck is an
2 interesting part of the -- of the report here. I'll come
3 back to that in just a minute, and that's where the bulk of
4 the controlled substances attributed to the Defendant were
5 found, and so there's a picture in a frame inside the same
6 house.

7 Now, one twist -- not twist, but I believe that the --
8 he was observed leaving this -- I'll call it résidence for
9 purposes of this hearing, not assuming that, but he left in
10 the truck and he was seen walking back. Then he left in a
11 car and he was then stopped in his car. When he was stopped
12 in his car, one of the fobs or the fob -- the officer said
13 he went around the neighborhood with the fob and found where
14 the truck was parked and so forth, so looks like that's the
15 way they traced it back to him, and then the inventory is
16 shown there in the Presentence Report.

17 Now, I made a long, rambling statement there, but I'm
18 just trying to get us to the point where you don't have to
19 repeat a lot of that. What highlights would you like to
20 make to top that up, Mr. Teakell?

21 MR. TEAKELL: Judge, just briefly. In addition to
22 what I put in the written objection, I'll just state that it is
23 my understanding a friend of his was living there and that
24 there were people in and out, different people in and out of
25 the house on a regular basis. In fact, there were some other

1 people there, as I understand, when he was arrested.

2 If I could have just a quick moment? May I have just a
3 quick moment?

4 THE COURT: Yes, sir.

5 (Pause in proceedings.

6 MR. TEAKELL: Judge, I would just add this as the
7 last thing. Although the Defendant, Mr. Betts, has been in
8 that house certainly and he had been there for short periods of
9 time, in and out on different occasions, my understanding was
10 that he didn't actually lease the place. He had leased a
11 different house on Johnson Street, and I don't know -- I think
12 the Government is relying on someone saying he had leased that.
13 I don't know if that's the disconnect or what as far as we
14 think what the facts are.

15 THE COURT: All right. Thank you. Mr. Locker?

16 MR. LOCKER: Your Honor, the Government would
17 primarily stand on its written response to Mr. Betts'
18 objection. However, we would note for the Court one of the
19 witnesses against Mr. Betts was the landlord who rented the --
20 that particular house to Mr. Betts, and the reason he became a
21 witness even before the question of tenancy was at issue was
22 that the truck in which the drugs were located Mr. Betts had
23 parked in that landlord's back grounds, and the agents located
24 that truck. Because it was parked in the back yard, they
25 contacted the homeowner of that house before going in the back

1 yard to determine if it was the same truck they believed it
2 was, and they ran a canine sniffing unit around the vehicle.

3 So they approached this individual and it was at that
4 time he said he's my tenant, he called me and asked me if he
5 could bring his truck over and park it in the back yard
6 because he was going out of town for a few weeks.

7 So it was rather specific information that the
8 Government obtained related to Mr. Betts' tenancy of that
9 location.

10 THE COURT: All right. Let me just -- I guess the
11 thing that I want to clarify here, now this -- these statements
12 that you're making here that are in addition to the Presentence
13 Report -- what I'm supposed to do here is look at the
14 Presentence Report and see if there's a prima facie case there
15 where I can decide that.

16 Given your arguments, since you haven't really
17 submitted -- I don't know -- in other words, your argument,
18 Mr. Teakell's argument, we're just sitting here with
19 argument: We haven't heard any testimony. So I'm just
20 looking at that Presentence Report and that's really all the
21 evidence I have, so tell me on what basis do I find
22 possession from this report?

23 MR. LOCKER: Your Honor, I believe the probation
24 officer's response to Mr. Teakell's objection contained within
25 the PSR states sufficient facts for the Court to make a finding

1 on it, specifically that the Presentence Investigation Report
2 notes his entry and exit from the residence immediately prior
3 to that..

4 And, Your Honor, I will also note for the Court, as a
5 matter of court record, when Mr. Betts' prior attorney filed
6 a motion to suppress the Government's evidence, the position
7 he took was that he had standing to contest the search of
8 that house. If it was not his residence, he would not have
9 standing to suppress it. So essentially it's an
10 inconsistent position he's taking regarding how it should be
11 construed.

12 THE COURT: So are you saying I can take judicial
13 notice of basically what's in the court record about the
14 evidence that was presented at the -- at that motion to
15 suppress?

16 MR. LOCKER: Yes, Your Honor, that is my position.

17 THE COURT: Okay. Mr. Teakell, I would like to hear
18 your version, since basically what I'm looking at is these four
19 corners.

20 MR. TEAKELL: Yes, sir.

21 THE COURT: And what he's referred me to take
22 judicial notice of.

23 MR. TEAKELL: Judge, we would have nothing else other
24 than the items -- the arguments I made are partly what Mr.
25 Betts would testify to if he were called to testify, but not

1 only that, my recollection about others being present during
2 the arrest I think is in the Government's discovery.

3 THE COURT: All right. Having considered the
4 evidence, I do take judicial notice of the hearings held
5 previously in court, the motion to suppress, and overrule the
6 objection to the report, respectfully, to you. I appreciate
7 you presenting the argument.

8 I'm -- having read the report, I adopt it in its
9 entirety and I do that because I find that it contains a
10 sufficient indicia of reliability to support its probable
11 accuracy and that the facts stated in the report are true by
12 a preponderance of the evidence.

13 I find that the offense level is a 31, that the
14 criminal history category is a Category III. The guideline
15 range is 135 to 168 months.

16 Now we'll move on to the next stage of the case and
17 that is the allocution. Mr. Betts, I used a fancy word
18 there, allocution. That's a different stage of this hearing
19 and what that means is it's just a fancy word for saying
20 it's a chance for people to tell me what they think the
21 sentence should be in the case. You'll have a right to make
22 a statement before you're sentenced. That's the long and
23 short. You don't have to do that. You can have your
24 attorney make a statement for you, but the AUSA also has a
25 right to make a statement, if they wish.



1 Do you understand your right to make a statement before
2 you're sentenced?

3 MR. DARRIN BETTS: Yes, sir.

4 THE COURT: All right. Let me make the announcement
5 that I'm going to -- now that I've had an opportunity to
6 totally review the report in its final form, I'm going to
7 accept the plea agreement and I will enter a judgment that is
8 consistent with it and incorporate the relevant terms in that
9 judgment.

10 Is there -- Mr. Teakell, I'll have you now -- if you
11 wish to make a statement, I'll have you get us started in
12 this phase. All right?

13 MR. TEAKELL: Yes, sir.

14 THE COURT: Please.

15 MR. TEAKELL: Thank you, Your Honor. Briefly, and
16 then Mr. Betts does have a statement he would like to make to
17 the Court. We do ask, of course, obviously ask the Court to
18 accept the agreement, and even though the agreed amount is --
19 that we're asking the Court to accept is larger than what the
20 Sentencing Guideline range is, part of the equation is the fact
21 that due to Mr. Betts' criminal history and the possibility --
22 the distinct possibility that the Government could and would
23 enhance him to a higher range is part of the -- is part of the
24 dynamic here.

25 We believe that all things considered, we ask the Court

1 to -- he has accepted responsibility and continues to, and
2 we ask the Court to accept the agreement as it is.

3 THE COURT: All right, sir. Thank you. Mr. Betts?

4 MR. DARRIN BETTS: Your Honor, I apologize to the
5 Court and to the Government for my actions. This case has made
6 me realize that I have to stop being involved with the wrong
7 people and doing what -- and doing what is right. I want to
8 get back to my family and support them and live a better life
9 going forward.

10 Thank -- thank you for hearing me. And I plan to never
11 be back on any case again.

12 THE COURT: All right. I appreciate that.

13 Mr. Locker.

14 MR. LOCKER: Thank you, Your Honor. I would like to
15 elaborate just briefly on what Mr. Teakell stated regarding the
16 nature of our plea agreement and why it's significantly outside
17 the calculated guideline range.

18 This case is one of those unusual cases in terms of
19 criminal history where Mr. Betts had two qualifying drug --
20 felony drug offense convictions that qualify for enhancement
21 under 21 USC Section 841 for enhancement to a possible life
22 sentence without parole should we go to trial.

23 However, since those two convictions noted in
24 paragraphs 28 and 29 of the Presentence Report, because
25 there was no intervening arrest between those convictions,

1 even though he qualifies for the enhancement 850 and 851
2 enhancement for life, he does not qualify for career
3 offender status. So that's why it's not reflected in the
4 Presentence Report as a career offender, because there is no
5 intervening arrest.

6 That said, this plea agreement was struck essentially
7 on the eve of trial and the Government drafted and presented
8 to the defense an 851 enhancement that would have made him,
9 should he be found guilty at the time of trial eligible for
10 life without parole.

11 On the eve of trial the parties reached a 230 month
12 plea agreement that represents an accommodation to the
13 Defendant for acceptance of responsibility, which with the
14 enhancement he could have none. Furthermore, for the sake
15 of judicial economy, and we believe it is an appropriate
16 sentence. We appreciate the Court's announcement that you
17 intend to follow it.

18 THE COURT: Thank you. Is there anything else that
19 the parties would like to say before I sentence the Defendant,
20 or is there any reason why I should not enter sentence at this
21 time?

22 MR. LOCKER: Not from the Government, Your Honor.

23 MR. TEAKELL: Nothing further, Your Honor, and there
24 is no reason he shouldn't be sentenced.

25 THE COURT: All right. Pursuant to the Sentencing

1 Reform Act of 1984, it's the judgment of the Court that the
2 Defendant, Darrin Lashaon Betts, is hereby committed to the
3 custody of the Bureau of Prisons to be imprisoned for a term of
4 240 months as to count one of the indictment.

5 I will note that the sentence is well above the
6 advisory guideline range and is being imposed in accordance
7 with the plea agreement.

8 I also would say that I find that a sentence of 240
9 months is sufficient but not greater than necessary to
10 achieve all the purposes of punishment. But I wanted to
11 also say that I find that the sentence adequately addresses
12 all the factors that the Court should consider in
13 sentencing, including but not limited to those set out in
14 Title 18 Section 3553(a).

15 Also, I want to point out that this sentence reflects
16 -- not only does it reflect all those factors, but even in
17 the absence of the guideline sentence, I find that this
18 sentence would be a sentence that I would find reasonable
19 considering all those factors, even if we didn't have the
20 guidelines.

21 I -- I think it was well stated by all the parties, but
22 specifically, I want to point out that point in the record
23 where the AUSA pointed out the very real possibility of this
24 Defendant being faced with a much more severe sentence. The
25 guidelines would have been much higher. Also, I have

1 considered all of that. I think it was well stated. We
2 don't need to go back into detail over that, but I
3 incorporate those as the reasons. And I, frankly, have
4 discussed this matter with the parties and understood that
5 this was the purpose or the reasoning for the disparity or
6 the difference between the guideline sentence and the
7 sentence I'm actually imposing here.

8 Now, I'm going to waive a fine in the case. I'll
9 assess a special assessment of \$100. That's due and payable
10 immediately by cashier's check or money order made payable
11 to the clerk's office in Tyler, and I'll put that address in
12 the judgment here.

13 I'm going to recommend that he be allowed to
14 participate in the comprehensive drug treatment program, and
15 that immediately upon his release from imprisonment he shall
16 be placed on five years supervised release.

17 Now, within 72 hours of your release from the Bureau of
18 Prisons, you are to report in person to the probation office
19 in the district in which you're released.

20 Where are you going to -- where would you like me to
21 recommend that he be placed?

22 MR. TEAKELL: Your Honor, we would request Texarkana.

23 THE COURT: All right. I'm going to recommend that
24 you be placed in the Texarkana facility of the Bureau of
25 Prisons. That means you are to report somewhere within this

1 whole district, at least in the Eastern District of Texas, but
2 you can take care of that because there are offices here that
3 you can report to, as I understand it. But even in the
4 absence, if there's not one here, there is one in this very
5 district. All right, sir?

6 MR. DARRIN BETTS: Yes, sir.

7 THE COURT: Now, while you're on supervised release,
8 you are not to commit another federal, state or local crime and
9 you shall abide by all the conditions that are set out in the
10 Presentence Report. You'll recall we went over those or you
11 told me that you went over those and you understood those
12 conditions, is that right?

13 MR. DARRIN BETTS: Yes, sir.

14 THE COURT: All right, sir. Now, let's go over your
15 waiver of appeal in this case. Do you recall that when you
16 entered your plea agreement that you waived almost all your
17 rights to appeal?

18 MR. DARRIN BETTS: Yes, sir.

19 THE COURT: Except for certain fundamental rights set
20 out in your plea agreement. In the event, even though you
21 waived it, you have a theory that you wish to present to the
22 Appellate Court, with few exceptions your notice of appeal must
23 be filed within 14 days of the judgment. Also, the clerk of
24 the court will prepare and file a notice of appeal, if you
25 request it. Do you pretty much understand that?

1 MR. DARRIN BETTS: Yes, sir.

2 THE COURT: All right, sir. I'm going to go ahead
3 and place this Presentence Report under seal. Of course,
4 counsel may have access for purposes of appeal.

5 And I see that you wish to dismiss counts two through
6 five, is that correct?

7 MR. LOCKER: That is correct, Your Honor. There's
8 also a matter of a money judgment forfeiture.

9 THE COURT: All right. I see Judge Craven entered a
10 preliminary forfeiture order that was adopted. Does that
11 pretty much cover what you wish to make final?

12 MR. LOCKER: That's correct, Your Honor. We filed an
13 ancillary motion that is a final a motion, Document No. 68, and
14 that seeks forfeiture of \$4,488 of actual funds seized, a
15 firearm and a money judgment for the amount of \$36,200.

16 THE COURT: All right. Mr. Teakell?

17 MR. TEAKELL: Yes, sir, Mr. Betts agreed to that, so
18 we have no objection to that motion.

19 THE COURT: All right. I'll sign any and all papers
20 necessary to carry that out or make that final.

21 Now, I've already recommended Texarkana. I'm going to
22 remand you to the custody of the United States Marshal and
23 then the Bureau of Prisons to begin your sentence, but I
24 want to tell you I appreciate your statement and I wish you
25 luck in serving your sentence. I know it's -- I'm not a

1 therapist. I don't mean it that way, but I'm just saying I
2 understand how hard it can be, but I hope you take this
3 opportunity and I wish you luck in that regard.

4 MR. DARRIN BETTS: Thank you.

5 THE COURT: All right, sir. You're welcome.

6 Anything else we need to deal with this morning? Any
7 more paper work in this case?

8 MR. LOCKER: Nothing further on the part of the
9 Government.

10 THE COURT: Any objections to the proceeding thus
11 far?

12 MR. TEAKELL: No, Your Honor.

13 MR. LOCKER: Not from the Government.

14 THE COURT: All right. Then everyone is excused.

15 MR. TEAKELL: Thank you, Judge.

16

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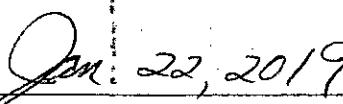
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21 I certify that the foregoing is a correct transcript from
22 the record of proceedings in the above-entitled matter.

23 
24 Jan Mason
25

23 
24 Jan. 22, 2019
25 Date

A P P E N D I X

Opinion of the Fifth Circuit Court of Appeals

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 6, 2021

No. 20-40331
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DARRIN LASHAON BETTS,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:13-CR-22-1

Before HAYNES, HO, and WILSON, *Circuit Judges.*

PER CURIAM:*

Darrin Lashaon Betts, federal prisoner # 21755-078, appeals the district court's denial of his motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) based on Sentencing Guidelines Amendment 782. Betts pleaded guilty in 2015 pursuant to a Federal Rule of Criminal Procedure

* Pursuant to 5TH CIRCUIT RULE 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 CIRCUIT RULE 47.5.4.

11(c)(1)(C) plea agreement to possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). He contends that the district court abused its discretion in denying the § 3582(c)(2) motion despite the plea agreement because, under *Hughes v. United States*, 138 S. Ct. 1765 (2018), both the Government and the district court acknowledged the applicable guidelines range at sentencing and because he did not receive a benefit from the plea agreement.

This court reviews the district court's denial of Betts's § 3582(c)(2) motion for an abuse of discretion. *United States v. Henderson*, 636 F.3d 713, 717 (5th Cir. 2011). Section 3582(c)(2) allows for the discretionary reduction of a sentence when the defendant is sentenced to a prison term based on a sentencing range that has subsequently been lowered by the Sentencing Commission under 28 U.S.C. § 994(o) if the reduction is consistent with Sentencing Commission policy statements. § 3582(c)(2). A two-step process governs a motion for a sentence reduction. *Id.* First, the district court determines if the defendant is eligible for a reduction under U.S.S.G. § 1B1.10 and the extent of the reduction authorized by the amended guidelines range. *Henderson*, 636 F.3d at 717. If the defendant is eligible for a reduction, the district court proceeds to the second step to determine whether, in its discretion, a reduction is warranted in consideration of any applicable § 3553(a) factors. *Id.* Amendment 782, which ~~became effective on November 1, 2014~~, amended the drug quantity tables and lowered by two levels the base offense levels for certain drug offenses. *See* U.S.S.G., App. C., Amend. 782; U.S.S.G. § 1B1.10(d).

As the Government points out, the district court applied Amendment 782 in the determination of Betts's guidelines range at sentencing. Thus, there is no new amendment to consider. Additionally, the district court at the original sentencing made clear that even without the guidelines, the sentence imposed would have been the same. Accordingly, Betts has not

A P P E N D I X C

United States v. Caracheo (Caselaw)

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. GABRIEL CARACHEO, Defendant-Appellant.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

741 Fed. Appx. 476; 2018 U.S. App. LEXIS 30583

No. 17-10249

October 22, 2018**, Submitted

**

October 29, 2018, Filed

Notice:

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Editorial Information: Subsequent History

Appeal dismissed by, Sub nomine at United States v. Castro, 2018 U.S. App. LEXIS 32284 (9th Cir. Cal., Nov. 14, 2018)

Editorial Information: Prior History

{2018 U.S. App. LEXIS 1}Appeal from the United States District Court for the Eastern District of California. D.C. No. 2:07-cr-00248-WBS. William B. Shubb, District Judge, Presiding. United States v. Caracheo, 2017 U.S. Dist. LEXIS 78365 (E.D. Cal., May 23, 2017)

Disposition:

VACATED and REMANDED.

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Jason Hitt. USSAC - Office of the US Attorney, Sacramento, CA.

For GABRIEL CARACHEO, Defendant - Appellant: Erin Jolene Radekin, Attorney, Law Office of Erin Radekin, Sacramento, CA.

Judges: Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

Opinion

{741 Fed. Appx. 477} MEMORANDUM*

Gabriel Caracheo appeals from the district court's order denying his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2). We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand.

Caracheo contends that he is eligible for a sentence reduction under Amendment 782 to the Sentencing Guidelines. We review de novo whether a district court had authority to modify a sentence under section 3582(c)(2). See *United States v. Davis*, 825 F.3d 1014, 1019 n.6 (9th Cir. 2016) (en banc). Because Caracheo was sentenced after the district court accepted the parties' Federal Rule of Criminal Procedure 11(c)(1)(C) plea agreement, he is not eligible for relief under section 3582(c)(2) unless "the district court's decision to accept the plea and impose the recommended sentence was based on the Guidelines." *Id.* at 1027 (internal quotations omitted).

The Supreme Court recently clarified that "a sentence imposed pursuant{2018 U.S. App. LEXIS 2}

to a Type-C agreement is 'based on' the defendant's Guidelines range so long as that range was part of the framework the district court relied on in imposing the sentence or accepting the agreement." *Hughes v. United States*, 138 S. Ct. 1765, 1775, 201 L. Ed. 2d 72 (2018). The district court in this case did not have the benefit of Hughes when it denied Caracheo's motion; therefore, we vacate its order denying relief and remand. On remand, the district court shall determine whether Caracheo is eligible for a sentence reduction under *Hughes* and, if so, whether he should receive a reduction in light of the 18 U.S.C. § 3553(a) sentencing factors. See *Dillon v. United States*, 560 U.S. 817, 826, 130 S. Ct. 2683, 177 L. Ed. 2d 271 (2010).

VACATED and REMANDED.

Footnotes

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This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

A P P E N D I X **D**

Pro se § 3582(c)(2) Motion

Grounds For Relief

Movant concedes that in 2015, the year he filed his initial Amendment 782 Motion, Fifth Circuit precedent would not allow this Court to reduce his sentence under § 3582(c)(2) because his sentence was based on a binding plea agreement under Fed.R.Crim.P. 11(c)(1)(C). See, United States v. Benitez, 822 F.3d 807, 810 (5th Cir. 2016).

However, in 2018, the Supreme Court abrogated the Fifth Circuit's holding in Benitez. In the case of Hughes v. United States, 138 S.Ct. 1765, 201 L.Ed.2d 72 (2018), the Supreme Court explained that a sentence imposed pursuant to a "Type-C" or Rule 11(C) plea agreement was typically based on the sentencing guideline range because the court must first evaluate the stipulated sentence in light of the defendant's sentencing guideline range. Id. at 1775-76. The Court held that a "sentence imposed pursuant to a Type-C agreement is based on the defendant's Guidelines range so long as that range was part of the framework the district court relied on in imposing the sentence or accepting the agreement." Id. at 1775.

Herein, Movant entered into a 11(C)(1)(C) agreement in which the parties agreed that the appropriate term of imprisonment was 240 months. At the sentencing hearing, this Court referred to the applicable guideline range of 135 to 168 months as Movant was a Base Offense Level 31 and a Criminal History Category III. See, Exhibit 3.

Conclusion

Wherefore, in consideration of the above Motion, Movant Darrin Lashaon Betts, humbly asks this Court to consider all the facts presented, and unrepresented when making the determination and decision of whether to Grant or Deny Movant's request for reduction.

Respectfully submitted By:

Darrin Betts

Darrin Lashaon Betts
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DATE: 7/27/19

Certificate of Service

I, Darrin Lashaon Betts, have mailed the above mentioned document to the United States District Court for the Eastern District of Texas on the date of 7/27/19, by U.S. Mail, First Class postage pre-paid.

Affidavit

I do swear under penalty of perjury that the above document, and Certificate of Service were made both true and fact.

Darrin Betts
Darrin Lashaon Betts

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

UNITED STATES OF AMERICA §
§
V. § NO. 5:13-CR-22
§
DARRIN LASHAON BETTS §

ORDER

Before the Court is Defendant Darrin Lashaon Betts's Renewed 18 U.S.C. § 3582(c)(2) Motion to Reduce Sentence Due to Retroactive Guideline Amendments 782 & 788. Docket No. 80. The United States has filed a response in opposition. Docket No. 85.

Defendant was convicted of possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A). At sentencing, his total offense level was determined to be 31, with a criminal history category of III, resulting in a guidelines range of 135 to 168 months' imprisonment and supervised release of five years to life. Docket No. 73 at 1 (statement of reasons); *see also* Docket No. 79 at 10 (sentencing transcript). Pursuant to a FED. R. CRIM. P. 11(c)(1)(C) agreement, Defendant was sentenced to 240 months' imprisonment and five years' supervised release. Docket No. 72. The parties' 11(c) agreement, therefore, resulted in a term of imprisonment significantly in excess of Defendant's guidelines range.

According to the government, a notice of enhancement under 28 U.S.C. § 851 was filed because of Defendant's two prior convictions for delivery of a controlled substance. Docket No. 85 at 2; *see also* Docket No. 37 (withdrawn by government, *see* Docket No. 57). Had Defendant gone to trial and been convicted, the government argues, he would have been subject to a mandatory minimum sentence of life imprisonment plus 60 months. Docket No. 85 at 2.

Defendant's previous motion for reduction of sentence under 18 U.S.C. § 3582(c)(2) was denied. *See* Docket Nos. 74, 77. Defendant's present motion, largely based on the same grounds as his previous motion, argues that Amendment 782 to the Sentencing Guidelines and *Hughes v. United States*, 138 S. Ct. 1765 (2018), justify a reduction of two levels in his sentence.

In *Hughes*, the Supreme Court held that a sentence imposed under an 11(c) agreement can be based on the defendant's guidelines range—and therefore make defendant eligible for a reduction under § 3582(c)—“so long as that range was part of the framework the district court relied on in imposing the sentence or accepting the agreement.” 138 S. Ct. at 1775. “What matters [] is the role that the Guidelines range played in the selection of the sentence eventually imposed—not the role that the range played in the initial calculation.” *Koops v. United States*, 138 S. Ct. 1783, 1789 (2018). “If the Guidelines range was not ‘a relevant part of the analytic framework the judge used to determine the sentence or to approve the agreement,’ then the defendant’s sentence was not based on that sentencing range, and relief under § 3582(c)(2) is unavailable. And that is so regardless of whether a defendant pleaded guilty pursuant to a Type-C agreement or whether the agreement itself referred to a Guidelines range.” 138 S. Ct. 1765, 1776 (quoting *Freeman v. United States*, 564 U.S. 522, 530 (2011)).

In this case, the Court has reviewed the briefing related to Defendant's motion, the revised final presentence investigation report (Docket No. 65), Defendant's factual resume (Docket No. 49), Defendant's plea agreement (Docket No. 50) and the transcript of the sentencing hearing (Docket No. 79). The government argues, and the Court agrees, that Defendant's guidelines range cannot fairly be seen as the foundation of the 240-month sentence that was imposed, in large part because of the benefit Defendant received by that sentence. Indeed, at sentencing, Defendant's counsel stated that “[w]e do ask, of course, obviously ask the Court to accept the agreement, and

even though the agreed amount is -- that we're asking the Court to accept is larger than what the Sentencing Guideline range is, part of the equation is the fact that due to [Defendant's] criminal history and the possibility -- the distinct possibility that the Government could and would enhance him to a higher range is part of the -- is part of the dynamic here." Docket No. 79 at 11.

In determining whether to accept an 11(c) agreement, a sentencing court must always consider the guidelines range. In light of the circumstances here, however, the Court determines that Defendant is not eligible for relief under § 3582(c)(2) because the "Guidelines range was not a relevant part of the analytic framework the judge used to determine the sentence or to approve the agreement." 138 S. Ct. at 1776 (quotation marks and citation omitted). Accordingly, Defendant's Renewed 18 U.S.C. § 3582(c)(2) Motion to Reduce Sentence Due to Retroactive Guideline Amendments 782 & 788 (Docket No. 80) is hereby **DENIED**.

So ORDERED and SIGNED this 9th day of April, 2020.

Robert W. Schroeder III
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE