

FILED: April 29, 2024

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 24-6123  
(3:10-cr-00111-9)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MOISES GAMBOA, a/k/a Mo

Defendant - Appellant

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JUDGMENT

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

**UNPUBLISHED**

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

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**No. 24-6123**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MOISES GAMBOA, a/k/a Mo,

Defendant - Appellant.

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Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, District Judge. (3:10-cr-00111-9)

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Submitted: April 3, 2024

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Decided: April 29, 2024

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Before NIEMEYER and HARRIS, Circuit Judges, and KEENAN, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Moises Gamboa, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Moises Gamboa appeals the district court's orders denying his 18 U.S.C. § 3582(c)(2) motion for a sentence reduction pursuant to Amendment 821 to the Sentencing Guidelines and denying reconsideration. We have reviewed the record and discern no reversible error. Accordingly, we affirm the district court's orders. *United States v. Gamboa*, No. 3:10-cr-00111-9 (S.D.W. Va., Dec. 22, 2023; Jan. 23, 2024). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 3:10-00111-09

MOISES GAMBOA

**ORDER**

Pending before the Court are Defendant Moises Gamboa's *pro se* "Consolidated Motion: Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(2) and USSG 1B1.10, et al." (ECF No. 809); his "Motion for an Order Directing the Government to Procure/Produce Petitioner's Medical Records and Additional Medical in Support [of] Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(2) and USSG 1B1.10, et al." (ECF No. 810); and his "Motion for an Order Directing the Government to Procure/Produce Petitioner's Post-Rehabilitation Documents in Support of: 18 U.S.C. § 3582(c)(2) and USSG 1B1.10, et al." ECF No. 811. At the time of sentencing, Defendant had zero criminal history points, placing him in a Criminal History Category of I. With a Total Offense Level of 38 and a Criminal History Category of I, Defendant's guideline range was 235 to 293 months imprisonment. Having granted Defendant's request for a variance, the Court sentenced him to a term of 200 months imprisonment.

Pursuant to U.S.S.G. §4C1.1, certain Zero Point Offenders are eligible for a decrease of two offense levels if their offense did not involve specified aggravating factors. One of those aggravating factors is that a defendant did not receive an adjustment for having an Aggravating Role under U.S.S.G. §3B1.1. U.S.S.G. §4C1.1(10). Upon review, the Court finds that, although Defendant had no criminal history points, he received a four level increase pursuant

to U.S.S.G. §3B1.1 at the time of sentencing. Accordingly, the Court **FINDS** Defendant does not qualify for a sentence reduction and **DENIES** his “Consolidated Motion” for a sentence reduction and appointment of counsel (ECF No. 809) and **DENIES** his remaining two related motions **AS MOOT**. ECF Nos. 811, 812.

The Court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: December 22, 2023



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ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 3:10-00111-09

MOISES GAMBOA

**ORDER**

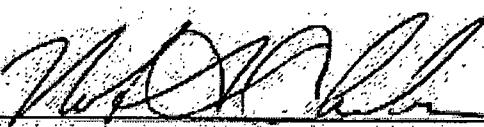
Pending before the Court is Defendant Moises Gamboa's *pro se* Motion for Reconsideration (ECF No. 815) of the Court's December 22, 2023 Order denying his "Consolidated Motion: Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(2) and USSG 1B1.10, et al." In the Court's earlier decision, the Court denied Defendant's request for a two-point reduction under U.S.S.G. §4C1.1 for being a Zero Point Offender because he received an Aggravating Role enhancement pursuant to U.S.S.G. §3B1.1, making him ineligible for the reduction under U.S.S.G. §4C1.1(10).

In his motion, Defendant asserts that §4C1.1(10) requires that he "did not receive an adjustment under §3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise[.]" U.S.S.G. §4C1.1(10). Defendant appears to argue that, although he received an enhancement under §3B1.1, he remains eligible for a reduction because the Court did not make a finding at sentencing that he was engaged in a continuing criminal enterprise. However, in order for a defendant to receive a reduction as a Zero Point Offender, the defendant must "meet[] *all* of the . . . criteria" listed under subsection (a). U.S.S.G. § 4C1.1(a) (italics added). In other words, it is his burden to demonstrate he did not receive an enhancement under §3B1.1 and that he was not

engaged in a continuing criminal enterprise. As Defendant does not meet the first prong of §4C1.1(10), he is not eligible for a reduction. *See United States v. Mahee*, Crim. Case No. 1:21-0494-SDG-JSA-1, 2023 WL 8452433, at \*2 (N.D. Ga. Dec. 6, 2023) (rejecting the defendant's argument that he qualified as a Zero Point Offender because he did not meet both criteria under §4C1.1(10) and stating "that the Zero-Point Offender Adjustment can only apply when the defendant has not done any of the things listed. If a defendant (or the crime) meets just one of the listed factors, the adjustment is not available."). Accordingly, the Court **DENIES** the Motion.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel and the defendant, the United States Attorney's Office, the United States Probation Office, and the United States Marshals Service.

ENTER: January 23, 2024



ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE

## Ch. 1 Pt. A

### §4C1.1. Adjustment for Certain Zero-Point Offenders

(a) **ADJUSTMENT.**—If the defendant meets all of the following criteria:

- (1) the defendant did not receive any criminal history points from Chapter Four, Part A;
- (2) the defendant did not receive an adjustment under §3A1.4 (Terrorism);
- (3) the defendant did not use violence or credible threats of violence in connection with the offense;
- (4) the offense did not result in death or serious bodily injury;
- (5) the instant offense of conviction is not a sex offense;
- (6) the defendant did not personally cause substantial financial hardship;
- (7) the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (8) the instant offense of conviction is not covered by §2H1.1 (Offenses Involving Individual Rights);
- (9) the defendant did not receive an adjustment under §3A1.1 (Hate Crime Motivation or Vulnerable Victim) or §3A1.5 (Serious Human Rights Offense); and
- (10) the defendant did not receive an adjustment under §3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848;

decrease the offense level determined under Chapters Two and Three by 2 levels.