

UNPUBLISHED

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

No. 24-6008

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDRE RICARDO ROACH, a/k/a Squeaky, a/k/a Redrum, a/k/a Rum,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
George L. Russell, III, Chief District Judge. (1:11-cr-00526-GLR-1)

Submitted: December 5, 2024

Decided: December 10, 2024

Before GREGORY and RICHARDSON, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Andre Ricardo Roach, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Andre Ricardo Roach appeals the district court's orders denying his motion for a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(2) and denying reconsideration. "We review a district court's decision [whether] to reduce a sentence under 18 U.S.C. § 3582(c)(2) for abuse of discretion and its ruling as to the scope of its legal authority under § 3582(c)(2) de novo." *United States v. Mann*, 709 F.3d 301, 304 (4th Cir. 2013). Our review of the record reveals no reversible error. Accordingly, we affirm the district court's orders. *United States v. Roach*, No. 1:11-cr-00526-GLR-1 (D. Md. Sept. 15, 2023; Dec. 13, 2023). 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

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,

v.

Crim. Case No.: GLR-11-0526

ANDRE RICARDO ROACH

* * * * *

ORDER

Upon remand from the United States Court of Appeals for the Fourth Circuit No. 21-7579, the Court addresses the Defendant Andre Roach's motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). ECF 1520. No hearing is necessary. For reasons outlined below the motion will be DENIED.

Pursuant to 18 USC §3582(c) district courts are divested of jurisdiction to modify a sentence except in cases which are specifically authorize by statute. One exception occurs when the United States sentencing Commission retroactively amends the guidelines for an offense. See 3582(c)(2).

The district court is not authorized, however, to entertain multiple or successive motions under §3582(c)(2) based upon the same guideline amendment. United States v Goodwyn, 596 F.3d (233,236)(4th Cir.2010). In the present case, this Court denied the petitioners first motion for relief pursuant to § 3582(c)(2) and amendment 782 on January 5, 2017. ECF Nos. 1033, 1170. The present request is a successive motion under the same statute and as a result this Court lacks proper authorization to grant the petitioner the relief he requests.

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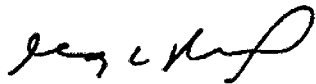
Even assuming this Court had the ability to reduce the petitioner's sentence pursuant to the Amendment 782, when considering factors under 18 U.S.C. § 3553(a) the Defendant is not entitled to the relief he requests. Looking at the history and characteristics of the Defendant he has a significant criminal history including violent crime convictions for second degree murder and first-degree assault. The Defendant has a history of gang affiliations and committing violence on behalf of the criminal organization. The Court also considers the nature and circumstances of the offense in which the Defendant was a leader of the violent criminal enterprise that was responsible for not only multiple acts of violence but significant drug distribution activities. The Court also considers the need for deterrence of not only the Defendant but of others like the Defendant.

Certainly, this Court acknowledges the Defendant's medical condition as well as the conditions of confinement especially during the COVID-19 crisis. Further, the Court recognizes the rehabilitative efforts the Defendant has engaged in while incarcerated. He has taken many educational courses including public speaking, criminal thinking, health/nutrition just to name a few. The Defendant should be applauded for these efforts.

While his rehabilitative efforts have not been insignificant, those efforts do not outweigh the other factors to be considered when determining if he is entitled to the relief he requests. Having considered at the above-mentioned factors including but not limited to the nature and circumstances of the offense and his history and characteristics this Court determines the Defendant has not met his burden to receive the relief he requests.

As a result, the Defendant's motion will be DENIED.

Date: September 15, 2023


George L. Russell, III
United States District Judge

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

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INFORMAL BRIEF

RE: No. 21-7579, US v. Andre Roach 1:11-cr-00526-GLR-1

1. Declaration of Inmate Filing

An inmate's notice of appeal is timely if it was deposited in the institution's internal mail system, with postage prepaid, on or before the last day for filing. Timely filing may be shown by:

- a postmark or date stamp showing that the notice of appeal was timely deposited in the institution's internal mail system, with postage prepaid, or
- a declaration of the inmate, under penalty of perjury, of the date on which the notice of appeal was deposited in the institution's internal mail system with postage prepaid. To include a declaration of inmate filing as part of your informal brief, complete and sign the declaration below:

Declaration of Inmate Filing

I am an inmate confined in an institution. I deposited my notice of appeal in the institution's internal mail system on 11/03/2021 [insert date]. First-class postage is being prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1794, 18 U.S.C. § 1621).

Signature: Andre Roach Date: 11/30/2021

2. Jurisdiction

Name of the court or agency from which you are appealing:
United States District Court District of Maryland

Dates of the order or orders for which review is sought:
10/29/2021 (Doc. 1528)

3. Issues for Review

Use the following spaces to set forth the facts and argument in support of the issues you wish the Court of Appeals to consider. The parties may cite case law, but citations are not required.

Issue 1.

The Court abused its discretion by failing to consider the Supreme Court decision in *Hughes v. United States*, 138 S.Ct. 1765 (2018)

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Supporting Facts and Argument.

See Attached MEMORANDUM IN SUPPORT OF INFORMAL BRIEF OF APPELLANT

Issue 2.

The Court abused its discretion by failing to adequately consider relevant factors under 18 U.S.C. Sec 3553 factors.

Supporting Facts and Argument.

See Attached MEMORANDUM IN SUPPORT OF INFORMAL BRIEF OF APPELLANT

Issue 3.

N/A

Supporting Facts and Argument.

N/A

Issue 4.

N/A

Supporting Facts and Argument

N/A

4. Relief Requested

Identify the precise action you want the Court of Appeals to take:

Remand to the District Court with directions to resentence Roach, to time served, in light of Hughes v. United States, 138 S.Ct 1765 (2018)

5. Prior appeals (for appellants only)

A. Have you filed other cases in this court?

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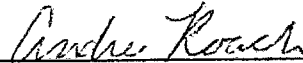
Yes

☒

No

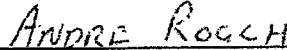
B. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

N/A



Signature

[Notarization Not Required]

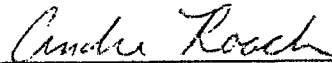


[Please Print Your Name Here]

CERTIFICATE OF SERVICE

I certify that on 11/30/2021 I served a complete copy of this Informal Brief on all parties, addressed as shown below:

See Attached Copies Mailed to Parties



Signature

NO STAPLES TAPES OR BINDING PLEASE

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CERTIFICATE OF SERVICE CONTINUED

Copies Mailed to Parties:

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

ANDRE RICARDO ROACH,
Appellant,

V.

UNITED STATES OF AMERICA,
Appellee.

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Case No. 21-7579

MEMORANDUM IN SUPPORT OF INFORMAL BRIEF OF APPELLANT

Statement of the Case

On October 23, 2013, Andre Roach ("Petitioner") pleaded guilty to Conspiracy to Participate in a Racketeering Enterprise in violation of 18 U.S.C. § 1962. On the same date, Petitioner was sentenced pursuant to a Rule 11(c)(1)(C) plea agreement to 360 months imprisonment.

On June 15, 2015, Petitioner moved this Court to reduce his sentence under 18 U.S.C. § 3582(c) and pursuant to U.S.S.G § 2D1.1 as amended by Amendment 782 and made retroactive by U.S.S.G. § 1B1.10(d). (See Doc. 1033). The Government responded claiming that Petitioner was not eligible for relief due to his Rule 11(c)(1)(C) plea. (Doc. 1165). The motion for reduction of sentence was denied (Docs. 1170 and 1171) because of the 11(c)(1)(C) plea and as authority invoked Freeman v. United States, 564 U.S. 522 (2011).

In 2019, Petitioner sought reduction of sentence pursuant to the First Step Act (Doc. 1334). Subsequent to Freeman, the Supreme Court addressed the issue of "Type C Plea Agreements" in Hughes v. United States, ___ U.S. ___, 138 S.Ct. 1765 (2018). The Supreme Court stated in Hughes, "Two cases decided after Freeman now reinforce this proposition. See Molina-Martinez, 578 U.S., at ___, 136 S.Ct., at 1346–1347 ; Peugh, 569 U.S., at 541–544, 133 S.Ct. 2072. These cases confirm that the Guidelines remain a basis for almost all federal sentences. In Peugh, the Court recognized that "[e]ven after Booker rendered the Sentencing

Guidelines advisory, district courts have in the vast majority of cases imposed either within-Guidelines sentences or sentences that depart downward from the Guidelines on the Government's motion." *Id.*, at 543, 133 S.Ct. 2072. And in Molina-Martinez, the Court explained that "[t]he Commission's statistics demonstrate the real and pervasive effect the Guidelines have on sentencing." 578 U.S., at —, 136 S.Ct., at 1346. In short, experience has shown that, although the interpretation proffered by Justice SOTOMAYOR's concurring opinion in *Freeman* could be one permissible reading of § 3582(c)(2), the system Congress put in place is best implemented, as a systemic, structural matter, by the interpretation confirmed in the instant case.

In response, the Government largely recycles arguments that a majority of this Court rejected in Freeman. For example, the Government contends that allowing defendants who enter Type-C agreements to seek reduced sentences under § 3582(c)(2) would deprive the Government of one of the benefits of its bargain—namely, the defendant's agreement to a particular sentence. But that has nothing to do with whether a defendant's sentence was based on the Sentencing Guidelines under § 3582(c)(2). Freeman, 564 U.S., at 531, 131 S.Ct. 2685 ; see also *id.*, at 540, 131 S.Ct. 2685 (opinion of SOTOMAYOR, J.). And in any event, "[w]hat is at stake in this case is a defendant's eligibility for relief, not the extent of that relief." *Id.*, at 532, 131 S.Ct. 2685 (plurality opinion). Even if a defendant is eligible for relief, before a district court grants a reduction it must consider "the factors set forth in section 3553(a) to the extent that they are applicable" and the Commission's "applicable policy statements." § 3582(c)(2). The district court can consider the benefits the defendant gained by entering a Type-C agreement when it decides whether a reduction is appropriate (or when it determines the extent of any reduction), "for the statute permits but does not require the court to reduce a sentence." Freeman, *supra*, at 532, 131 S.Ct. 2685 .

The Government argued that allowing courts to reduce the sentences of defendants, like Roach, would be inconsistent with the Commission's policy statement in USSG § 1B1.10, which

provides that when a district court modifies a sentence under § 3582(c)(2) it "shall substitute only the [retroactive] amendments listed in subsection (d) for the corresponding guidelines provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected." USSG § 1B1.10(b)(1). According to the Government, no "guidelines provisions" are "applied" when a defendant enters a Type—C agreement because at the moment of sentencing—that is, after the court has already accepted the agreement— Rule 11 prohibits the court from imposing any sentence other than the one the parties bargained for. This argument fails for at least two reasons.

Subsequent to his original filing (Doc.1334) Appellant submitted a Motion to Supplement Motion to Reduce Sentence (Doc.1520) relying on the holding in Hughes. The Court acknowledges that Appellant's Supplement (Doc.1520 at 4) as well as motion was considered in denying relief, however, there is no mention of Hughes. (1526).

Appellant then filed a Motion for Reconsideration (Doc.1527). The Court denied relief without addressing Hughes either. (Doc.1528)

1. Issue 1 Argument

The crux of Appellant's argument is that the District Court erred in failing to consider Hughes after numerous pleadings to do so. Appellant filed a Supplement (Doc.1520) relying on Hughes. The Court denied relief, without a mention of

In Hughes, the Supreme Court addressed how to determine whether defendants in drug cases who entered into Rule 11(c)(1)(C) pleas received sentences "based on" the sentencing guidelines. Justice Kennedy, writing for the Hughes majority, held that "a sentence imposed pursuant to a [Rule 11(c)(1)(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. 2 The sentence need not be within the guideline range; the guideline range need only have

been "a relevant part of the analytic framework the judge used to determine the sentence or to approve the agreement." *Id.* at 1776.

Given the prominent role the Sentencing Guidelines play in federal sentencing, the Hughes court established "the general rule that, in most cases, a defendant's sentence will be 'based on' his Guidelines range." *Id.* The Court further articulated the standard for eligibility as follows:

In federal sentencing the Guidelines are a district court's starting point, so when the Commission lowers a defendant's Guidelines range the defendant will be eligible for relief under § 3582(c)(2) absent clear demonstration, based on the record as a whole, that the court would have imposed the same sentence regardless of the Guidelines.

Id. Applying this definition to the case before the Court, Justice Kennedy concluded that Mr. Hughes' "Type-C" plea agreement for a 180-month sentence (outside of the guideline range) was "based on" the Sentencing Guidelines. *Id.* at 1778; see also United States v. Armstead, 895 F.3d 832, 834 (5th Cir. 2018) (holding that defendant's 180-month sentence was based on the guidelines under Hughes where district court noted that the sentence was above the applicable guideline range); United States v. Smith, 2018 WL 6433581 (4th Cir. 2018) (vacating denial of sentencing reduction motion under § 3582(c) where "the record did not clearly demonstrate that the Guidelines were irrelevant to the sentencing court's acceptance of the plea agreement or that the court would have imposed the same sentence absent the Guidelines"); United States v. Cofield, 745 Fed. App'x. 498 (4th Cir. 2018) (same); United States v. Taylor, 741 Fed. App'x 161 (4th Cir. 2018) (same); United States v. Woodward, 740 Fed. App'x. 38 (4th Cir. 2018) (same).

a. Relevance of Hughes v. United States , *supra* to Appellant

In this case Petitioner filed a Motion for Reduction of Sentence under the First Step Act of 2018 (Doc. 1334). In his motion, Petitioner, alleged that this Court found him to be a career offender after finding in his Presentence Report (PSR) that there were predicate crimes of violence to qualify him for enhancement as a career offender.

The Court's application of the career offender enhancement subjected Petitioner to a Sentencing Guideline range of 360 months to life imprisonment, based on a then offense level of 37. Petitioner averred that without the career offender finding who would be subject to a sentence of 168 - 210 months. (Offense Level of 31, Criminal History Category IV).

Petitioner also averred that he qualified for a reduction of sentence under the Fair Sentencing Act of 2010, which was made retroactive under the First Step Act of 2018, from an offense level 32 to that if sentenced today to 30.

Petitioner's argument is that his motion should be construed as a motion for a reduction of sentence pursuant to 18 U.S.C. § 382(c)(2) and the crux of his argument is that, the Fair Sentencing Act of 2010 retroactively reduces his sentence, based on the First Step Act.

Subsequent to Hughes, this same District found that Hughes "significantly expanded the circumstances in which a defendant sentenced pursuant to a ["C"] plea agreement may be entitled to a sentence reduction." United States v. Taylor, 741 F. App'x 161, 162 (4th Cir. 2018). In Hughes, the Supreme Court held that a "C" plea *2 agreement is based on the Sentencing Guidelines—as required for sentence reduction eligibility—if the sentencing court relied on the Guidelines range as "part of the framework" in accepting the agreement. 138 S. Ct. at 1775. The Court concluded that, "in most cases, a defendant's sentence will be 'based on' his Guidelines range." Id. at 1776. "[A]bsent clear demonstration, based on the record as a whole," that the sentencing court discarded the range, a defendant is eligible for a sentence reduction. United States v. Brown, CRIMINAL NO. JKB-09-0183 (D. Md. Feb. 4, 2019).

Because Petitioner's Amendment 782 motion (Doc.1033) was denied based on Freeman, which has been altered significantly by Hughes; Peugh v. United States, 569 U. S. 530 (2013); and Molina-Martinez v. United States, 578 U. S. ____ (2016) this case should be remanded to the district court with directions to resentence Roach to time served.

b. Petitioner's sentence has been altered by the Bureau of Prison contrary to his Judgment and Sentence

Petitioner's sentence imposed by this Court was that he would serve his sentence 360 month sentence concurrently with his 50 year Maryland sentence and the "place of confinement shall be within the BOP." Appellant's Judgment and Commitment clearly states,

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 360 months, to run concurrently with any Maryland state sentence being served. The defendant's place of confinement for service shall be within the Bureau of Prisons. (Doc.904 at 2).

In April, 2021, Petitioner was returned, by the BOP, to serve his sentence in the State of Maryland. This could only be construed that the Bureau of Prison has relinquished custody of Petitioner, or just outright breached this Court's Order that his place of confinement shall be within the BOP. Petitioner is now confined in the Maryland Department of Corrections, not the BOP. The stipulation that Petitioner serve his time within the BOP was part of his plea agreement and therefore his inducement to plead guilty and subsequently his Judgment and Sentence.

In the sake of fairness, this Court, nor Petitioner envisioned that he would do part of his sentence in the BOP, then returned to the State Maryland to do his federal sentence concurrently with his 50 years, contrary to his Judgment and Commitment. This Court should order "time served" on Petitioner's Federal Sentence, since the BOP has already relinquished custody of Appellant to the State of Maryland.

2. Issue 2 Argument

The District Court has failed to consider Appellant's rehabilitation efforts over the past 10 years of incarceration. If courts denied all First Step Act motions based on the person that was initially arrested for their dastardly deeds no one would be entitled to relief and the First Step Act would in effect be moot. In considering the factors under 18 U.S.C. § 3553 this Court must consider not only the person at the time of the offense but the rehabilitation factors of that

same person 10 years later. A court should also consider Appellant's age now. It is a fact that the older an inmate when released the less likely they will be recidivists.

Other courts have implemented reductions in sentences based on the criteria of the First Step Act in reducing sentences, not just a blanket determination not to reduce sentences imposed by the judge making the determination on relief.

Many violent criminals and sex offenders have been released under the First step Act. A district court cannot pick and choose which laws they like or dislike, discretion does not provide for such. It should be noted that the data of those released as of July 22, 2019 were as follows: Of 2,243 inmates released under the First Step Act, only 960 were incarcerated for drug-related offenses. On the other hand, 496 were in prison for weapons/explosives-related crimes, 239 for sex offenses, 178 for fraud/bribery/extortion, 118 for burglary/larceny and 106 for robbery, according to the data. Another 59 were imprisoned over homicide/aggravated assault, 46 for immigration-related offenses, nine for counterfeiting/embezzlement and two for national security reasons. Since the time of this data many more gang member, murderers, and violent criminals have been released under the First Step Act based on their good conduct and rehabilitation efforts, length of incarcerations, age, programming within the prison, etc, all factors that the District court in this case failed to consider.

Date: 11/30/2021

Respectfully submitted,



Andre Roach

#300-117/17319338

Western Correctional Institution

13800 McMullen Hwy., S.W.

Cumberland, MD 21502

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(BALTIMORE)**

ANDRE RICARDO ROACH,
Petitioner,

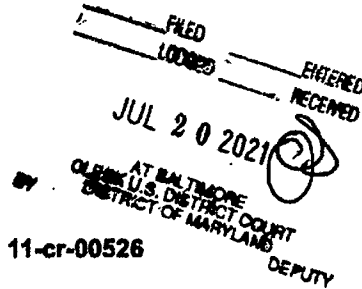
V.

UNITED STATES OF AMERICA,
Respondent.

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Case No. 11-cr-00526

Judge George Levi Russell, III



**MOTION TO SUPPLEMENT ROACH'S
MOTION FOR REDUCTION OF SENTENCE
UNDER THE FIRST STEP ACT OF 2018 (Doc.1334)**

Comes now, Andre Ricardo Roach, Petitioner pro se, pursuant to 18 U.S.C. § 3582(c)(2) herein moves to supplement his motion under the First Step Act and reduction of his sentence of 360 months, and states the following in support thereof:

JURISDICTION

In this Case it appears, from the docket entries, that Petitioner's motion under the First Step Act of 2018 (Doc.1334) has never been ruled upon, thus supplementing is appropriate.

This Court has jurisdiction under the First Step Act of 2018 to reduce Petitioner's sentence by motion under 18 U.S.C. § 3582(c)(2). Specifically, § 3582(c)(2) provides:

"[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), ... 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 such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

In this particular case jurisdiction is clarified by Hughes v. United States, ___ U.S. ___, 138 S.Ct. 1765 (2018). See also United States v. Brown, Crim. No. JKB-09-0183, 2019 U.S. Dist. LEXIS 18653 (D.MD February 4, 2019).

STATEMENT OF THE CASE

On October 23, 2013, Andre Roach ("Petitioner") pleaded guilty to Conspiracy to Participate in a Racketeering Enterprise in violation of 18 U.S.C. § 1962. On the same date, Petitioner was sentenced pursuant to a Rule 11(c)(1)(C) plea agreement to 360 months imprisonment.

On June 15, 2015, Petitioner moved this Court to reduce his sentence under 18 U.S.C. § 3582(c) and pursuant to U.S.S.G § 2D1.1 as amended by Amendment 782 and made retroactive by U.S.S.G. § 1B1.10(d). (See Doc. 1033). The Government responded claiming that Petitioner was not eligible for relief due to his Rule 11(c)(1)(C) plea. (Doc. 1165). The motion for reduction of sentence was denied (Docs. 1170 and 1171) because of the 11(c)(1)(C) plea and as authority invoked Freeman v. United States, 564 U.S. 522 (2011).

In 2019, Petitioner sought reduction of sentence pursuant to the First Step Act (Doc. 1334). Subsequent to Freeman, the Supreme Court addressed the issue of "Type C Plea Agreements" in Hughes v. United States, ___ U.S. ___, 138 S.Ct. 1765 (2018). The Supreme Court stated in Hughes, "Two cases decided after Freeman now reinforce this proposition. See Molina-Martinez, 578 U.S., at ___, 136 S.Ct., at 1346–1347 ; Peugh, 569 U.S., at 541–544, 133 S.Ct. 2072. These cases confirm that the Guidelines remain a basis for almost all federal sentences. In Peugh, the Court recognized that "[e]ven after Booker rendered the Sentencing Guidelines advisory, district courts have in the vast majority of cases imposed either within-Guidelines sentences or sentences that depart downward from the Guidelines on the Government's motion." *Id.*, at 543, 133 S.Ct. 2072. And in Molina-Martinez, the Court explained

that "[t]he Commission's statistics demonstrate the real and pervasive effect the Guidelines have on sentencing." 578 U.S., at —, 136 S.Ct., at 1346. In short, experience has shown that, although the interpretation proffered by Justice SOTOMAYOR's concurring opinion in Freeman could be one permissible reading of § 3582(c)(2), the system Congress put in place is best implemented, as a systemic, structural matter, by the interpretation confirmed in the instant case.

In response, the Government largely recycles arguments that a majority of this Court rejected in Freeman. For example, the Government contends that allowing defendants who enter Type-C agreements to seek reduced sentences under § 3582(c)(2) would deprive the Government of one of the benefits of its bargain—namely, the defendant's agreement to a particular sentence. But that has nothing to do with whether a defendant's sentence was based on the Sentencing Guidelines under § 3582(c)(2). Freeman, 564 U.S., at 531, 131 S.Ct. 2685; see also *id.*, at 540, 131 S.Ct. 2685 (opinion of SOTOMAYOR, J.). And in any event, "[w]hat is at stake in this case is a defendant's eligibility for relief, not the extent of that relief." *Id.*, at 532, 131 S.Ct. 2685 (plurality opinion). Even if a defendant is eligible for relief, before a district court grants a reduction it must consider "the factors set forth in section 3553(a) to the extent that they are applicable" and the Commission's "applicable policy statements." § 3582(c)(2). The district court can consider the benefits the defendant gained by entering a Type-C agreement when it decides whether a reduction is appropriate (or when it determines the extent of any reduction), "for the statute permits but does not require the court to reduce a sentence." Freeman, *supra*, at 532, 131 S.Ct. 2685.

The Government also contends that allowing courts to reduce the sentences of defendants like Hughes would be inconsistent with the Commission's policy statement in USSG § 1B1.10, which provides that when a district court modifies a sentence under § 3582(c)(2) it "shall substitute only the [retroactive] amendments listed in subsection (d) for the corresponding guidelines provisions that were applied when the defendant was sentenced and shall leave all

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other guideline application decisions unaffected." USSG § 1B1.10(b)(1). According to the Government, no "guidelines provisions" are "applied" when a defendant enters a Type-C agreement because at the moment of sentencing—that is, after the court has already accepted the agreement—Rule 11 prohibits the court from imposing any sentence other than the one the parties bargained for. This argument fails for at least two reasons. First, the Government's interpretation of § 1B1.10 depends on an artificial distinction between a court's decision to accept a Type-C agreement and its decision "1778 to impose the agreed-upon sentence. As explained above, a district court must consider the defendant's "applicable Guidelines range" when it decides whether to accept or reject the agreement, USSG § 6B1.2(c) —often, as here, at the sentencing hearing, after the court has reviewed the presentence report. And as the Government itself points out, once the district court accepts the agreement, the agreed-upon sentence is the only sentence the court may impose. Thus, there is no meaningful difference between a court's decision to accept a Type-C agreement that includes a particular sentence and the court's decision (sometimes, as here, just minutes later) to impose that sentence.

Second, the Commission's policy statement "seeks to isolate whatever marginal effect the since-rejected Guideline had on the defendant's sentence." Freeman, 564 U.S., at 530, 131 S.Ct. 2685. Accordingly, relief under § 3582(c)(2) should be available to permit the district court to reconsider a prior sentence to the extent the prisoner's Guidelines range was a relevant part of the framework the judge used to accept the agreement or determine the sentence. *Ibid.* If the district court concludes that it would have imposed the same sentence even if the defendant had been subject to the lower range, then the court retains discretion to deny relief. In this case the District Court accepted Hughes' Type-C agreement after concluding that a 180-month sentence was consistent with the Sentencing Guidelines. App. to Pet. for Cert. 33a. The court then calculated Hughes' sentencing range and imposed a sentence that the court deemed "compatible" with the Guidelines. *Id.*, at 36a, 47a. Thus, the sentencing range was a basis for the sentence that the District Court imposed. That range has "subsequently been lowered by

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the Sentencing Commission," so Hughes is eligible for relief under § 3582(c)(2). The Court expresses no view as to whether the District Court should exercise its discretion to reduce Hughes' sentence after considering the § 3553(a) factors and the Commission's relevant policy statements. See 18 U.S.C. § 3582(c)(2). * * * For these reasons, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion."

EXTRAORDINARY AND COMPELLING REASON TO REDUCE ROACH'S SENTENCE

In this case Petitioner accepted a C-Plea to Conspiracy to Participate in a Racketeering Enterprise in violation of 18 U.S.C. § 1962. On the same date, Petitioner was sentenced pursuant to a Rule 11(c)(1)(C) plea agreement to 360 months imprisonment. Petitioner's stipulated Plea Agreement at "Factual and Advisory Guidelines Stipulation" ¶¶ 6-9.

a. Relevance of Hughes v. United States to the Instant Case

In this case Petitioner filed a Motion for Reduction of Sentence under the First Step Act of 2018 (Doc. 1334). In his motion, Petitioner, alleged that this Court found him to be a career offender after finding in his Presentence Report (PSR) that there were predicate crimes of violence to qualify him for enhancement as a career offender.

The Court's application of the career offender enhancement subjected Petitioner to a Sentencing Guideline range of 360 months to life imprisonment, based on a then offense level of 37. Petitioner averred that without the career offender finding who would be subject to a sentence of 168 - 210 months. (Offense Level of 31, Criminal History Category IV).

Petitioner also averred that he qualified for a reduction of sentence under the Fair Sentencing Act of 2010, which was made retroactive under the First Step Act of 2018, from an offense level 32 to that if sentenced today to 30.

Petitioner's argument is that his motion should be construed as a motion for a reduction of sentence pursuant to 18 U.S.C. § 382(c)(2) and the crux of his argument is that, the Fair Sentencing Act of 2010 retroactively reduces his sentence, based on the First Step Act.

The Government's response in opposition has consistently been that because Petitioner took a C-Plea he is not authorized to have his sentence reduced. However, based upon the Hughes holding that:

Held:

1. 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. Pp. 7–14.

(a). A principal purpose of the Sentencing Guidelines is to promote sentencing uniformity. But in the aftermath of *Freeman*, a defendant's eligibility for a reduced sentence under §3582(c)(2) turns on the Circuit in which the case arises. Even within Circuits that follow the *Freeman* concurrence, unwarranted disparities have resulted depending on whether a defendant's Type-C agreement has a specific enough reference to a Guidelines range. This Court's precedents since *Freeman* have confirmed that the Guidelines remain the foundation of federal sentencing decisions. See, e.g., Peugh v. United States, 569 U. S. 530; Molina-Martinez v. United States, 578 U. S. _____. Pp. 7–9.

(b) A district court imposes a sentence that is "based on" a Guidelines range for purposes of §3582(c)(2) if the range was a basis for the court's exercise of discretion in imposing a sentence. Given the standard legal definition of "base," there will be no question in the typical case that the defendant's Guidelines range was a basis for his sentence. A district court is required to calculate and consider a defendant's Guidelines range in every case. §3553(a). Indeed, the Guidelines are "the starting point for every sentencing calculation in the federal system." Peugh, *supra*, at 542. Thus, in general, §3582(c)(2) allows district courts to reconsider a prisoner's sentence based on a new starting point—that is, a lower Guidelines range—and determine whether a reduction is appropriate.

A sentence imposed pursuant to a Type-C agreement is no exception to the general rule that a defendant's Guidelines range is the starting point and a basis for his ultimate sentence. The Government and the defendant may agree to a specific sentence, but the Sentencing Guidelines prohibit district courts from accepting Type-C agreements without first evaluating the recommended sentence in light of the

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defendant's Guidelines range. So in the usual case the court's acceptance of a Type-C agreement and the sentence to be imposed pursuant to that agreement are "based on" the defendant's Guidelines range. Since the Guidelines are a district court's starting point, when the Commission lowers the range, the defendant will be eligible for relief under §3582(c)(2) absent clear demonstration, based on the record as a whole, that the court would have imposed the same sentence regardless of the Guidelines.

This interpretation furthers §3582(c)(2)'s purpose, as well as the broader purposes of the Sentencing Reform Act. It is also reinforced by Molina-Martinez and Peugh, which both confirm that the Guidelines remain a basis for almost all federal sentences. Experience has shown that, although the interpretation proffered by JUSTICE SOTOMAYOR's concurring opinion in Freeman could be one permissible reading of §3582(c)(2), as a systemic, structural matter the system Congress put in place is best implemented by the interpretation confirmed in this case. Pp. 9–12.

(c) The Government's counterarguments—that allowing defendants with Type-C agreements to seek reduced sentences under §3582(c)(2) would deprive the Government of a benefit of its bargain, namely, the defendant's agreement to a particular sentence; and that allowing courts to reduce the sentences of defendants like Hughes would be inconsistent with one of the Commission's policy statements—are unpersuasive. Pp. 12–14.

2. Hughes is eligible for relief under §3582(c)(2). The District Court accepted his Type-C agreement after concluding that a 180- month sentence was consistent with the Guidelines, and then calculated Hughes' sentencing range and imposed a sentence it deemed "compatible" with the Guidelines. The sentencing range was thus a basis for the sentence imposed. And that range has since been lowered by the Commission. The District Court has discretion to decide whether to reduce Hughes' sentence after considering the §3553(a) factors and the Commission's relevant policy statements. P. 14. 849 F. 3d 1008, reversed and remanded.

Subsequent to Hughes, this District found that Hughes "significantly expanded the circumstances in which a defendant sentenced pursuant to a ["C"] plea agreement may be entitled to a sentence reduction." United States v. Taylor, 741 F. App'x 161, 162 (4th Cir. 2018).

In Hughes, the Supreme Court held that a "C" plea *2 agreement is based on the Sentencing Guidelines—as required for sentence reduction eligibility—if the sentencing court relied on the Guidelines range as "part of the framework" in accepting the agreement. 138 S. Ct. at 1775. The Court concluded that, "in most cases, a defendant's sentence will be 'based on' his Guidelines range." Id. at 1776. "[A]bsent clear demonstration, based on the record as a whole," that the sentencing court discarded the range, a defendant is eligible for a sentence reduction. United States v. Brown, CRIMINAL NO. JKB-09-0183 (D. Md. Feb. 4, 2019).

In arguendo, the Government may claim because Petitioner previously sought relief under Guideline Amendment 782 that he may not file a successive motion under the First Step Act seeking Amendment 782 relief. Brown would dispel that argument and says, "

Section 3582(c)(2) allows a court to modify a sentence which was "based on a sentencing range that has subsequently been lowered by the Sentencing Commission." As § 3582(c)(2) allows a defendant to move for reduction based on a change by the Sentencing Commission, a later change in Supreme Court precedent, extending eligibility to more defendants, should allow those newly eligible defendants to so move, despite any prior attempts. While this is Defendant's second § 3582(c)(2) motion, it is his first post-Hughes § 3582(c)(2) motion. To *3 conclude that Defendant is not allowed to avail himself of Hughes would functionally ignore a directive from the Supreme Court. Id at 2.

Because Petitioner's Amendment 782 motion (Doc.1033) was denied based on Freeman, which has been altered significantly by Hughes; Peugh v. United States, 569 U. S. 530 (2013); and Molina-Martinez v. United States, 578 U. S. ____ (2016) relief must be considered and granted.

- b. Petitioner's sentence has been altered by the Bureau of Prison contrary to his Judgment and Sentence.**

Petitioner's sentence imposed by this Court was that he would serve his sentence 360

month sentence concurrently with his 50 year Maryland sentence and the place of confinement shall be within the BOP. See Exhibit A.

e Exhibit A. . In April, 2021, Petitioner was returned, by the BOP, to serve his sentence in the State of Maryland. This could only be construed that the Bureau of Prison has relinquished custody of Petitioner, or just outright breached this Court's Order that his place of confinement shall be within the BOP. Petitioner is now confined in the Maryland Department of Corrections, not the BOP. The stipulation that Petitioner serve his time within the BOP was part of his plea agreement and therefore his inducement to plead guilty and subsequently his Judgment and Sentence. See Exhibit A.

In the sake of Falmess, this Court, nor Petitioner envisioned that he would do part of his sentence in the BOP, then returned to the State Maryland to do his federal sentence concurrent there with his 50 years and should he be paroled there returned to the BOP. It was not his knowing and voluntary decision to plead guilty, nor this Court's sentence.

This Court should order "time served" on Petitioner's Federal Sentence, thereby negating further litigation for the breach of his plea agreement and violation of the terms of his Judgment and Sentence. See Exhibit A.

CONCLUSION

Based on the foregoing Petitioner's sentence should be reduced based on Amendment 782, or immediate release since, he is no longer in federal custody, as ordered by this Court, at Sentencing.

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Date: July 13, 2021

Respectfully submitted,



Andre Roach

#300-117/1731933

Western Correctional Institution

13800 McMullen Hwy., S.W.

Cumberland, MD 21502

CERTIFICATE OF SERVICE

Petitioner, Andre Roach, hereby certifies that a true and correct copy of the foregoing has been furnished to Jonathan F. Lenzer, Office of the United States Attorney, 36 S Charles St, Fourth Floor, Baltimore, MD, this 13th day of July, 2021, by first class US Mail..


Andre Roach

United States District Court

District of Maryland

UNITED STATES OF AMERICA

v.

ANDRE RICARDO ROACH

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed on or After November 1, 1987)

Case Number: JFM-1-11-CR-00526-001

USM Number: N/A

Defendant's Attorney: Richard Bardos, CJA

Assistant U.S. Attorney: Andrea Smith & David Copperthite

THE DEFENDANT:

- ☒ pleaded guilty to count(s) 1 of the Indictment
☐ pleaded nolo contendere to count(s) _____, which was accepted by the court.
☐ was found guilty on count(s) _____ after a plea of not guilty.

Title & Section
 18:1962(d)

Nature of Offense
 Conspiracy to Participate in
 Racketeering Activity.

Date
Offense Concluded
 09/21/11

Count
Number(s)
 1

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as modified by U.S. v. Booker, 125 S. Ct. 738 (2005).

- ☐ The defendant has been found not guilty on count(s) _____
☒ Count(s) 2 and the Superseding Indictment are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

October 23, 2013
 Date of Imposition of Judgment

FILED
 U.S. DISTRICT COURT
 DISTRICT OF MARYLAND
 2013 OCT 23 P 4:12
 CLERK'S OFFICE
 AT BALTIMORE
 BY _____

J. Frederick Motz
 United States District Judge

Date 10/23/13

ER: M. Smith

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DEFENDANT: ANDRE RICARDO ROACH

CASE NUMBER: JFM-1-11-CR-00526-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 360 months, to run concurrently with any Maryland state sentence being served. The defendant's place of confinement for service shall be within the Bureau of Prisons.

☒ The court makes the following recommendations to the Bureau of Prisons:

1. That the defendant be placed in a facility within the Bureau of Prisons.
2. That the defendant be designated to the FCI at Petersburg, Virginia or Lee County, Virginia for service of his sentence.
3. That the defendant be given credit for time served since November 1, 2011.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ a.m./p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:

☐ before 2 p.m. on _____.

A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. §3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. §3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. §3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

A. STATUTORY CONDITIONS OF SUPERVISED RELEASE

- 1) The defendant shall not commit any federal, state or local crime.
- 2) In any felony case, the defendant shall not possess a firearm or ammunition as defined in 18 U.S.C. §921.
- 3) The defendant shall not illegally use or possess a controlled substance.
- 4) The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.
- ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- 5) Pursuant to Pub. Law 108-405, Revised DNA Collection Requirements Under the Justice for All Act of 2004, if applicable, the defendant shall cooperate in the collection of DNA while incarcerated in the Bureau of Prisons, or as directed by the probation officer.
- 6) If this judgment imposes any criminal monetary penalty, including special assessment, fine, or restitution, it shall be a condition of supervised release that the defendant pay any such monetary penalty that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

B. STANDARD CONDITIONS OF SUPERVISION

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) The defendant shall support his or her dependents and meet other family responsibilities;
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) The defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) The defendant shall refrain from excessive use of alcohol;
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any persons convicted of a felony unless granted permission to do so by the probation officer;
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
- 12) The defendant shall notify the probation officer within 72 hours of being charged with any offense, including a traffic offense;
- 13) The defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the court;
- 14) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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**C. SUPERVISED RELEASE
ADDITIONAL CONDITIONS**

1. The defendant shall satisfactorily participate in a treatment program approved by the probation officer relating to substance and/or alcohol abuse, which may include evaluation, counseling, and testing

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DEFENDANT: ANDRE RICHARDO ROACH

CASE NUMBER: JFM-1-11-CR-00526-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$
<input type="checkbox"/> CVB Processing Fee \$25.00			

- ☐ The determination of restitution is deferred until Click here to enter a date.. *An Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
	0	0	

TOTALS	\$	0	\$	0
---------------	----	---	----	---

- ☐ Restitution amount ordered pursuant to plea agreement _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A ☒ In full immediately; or
- B ☐ \$_____ immediately, balance due (in accordance with C, D, or E); or
- C ☐ Not later than _____; or
- D ☐ Installments to commence _____ day(s) after the date of this judgment.
- E ☐ In _____ (e.g. equal weekly, monthly, quarterly) installments of \$_____ over a period of _____ year(s) to commence when the defendant is placed on supervised release.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties except those payments made through the Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the Clerk of the Court.

If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

- ☐ in equal monthly installments during the term of supervision; or
- ☐ on a nominal payment schedule of \$_____ per month during the term of supervision.

The U.S. probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States: