

No. 17-6813

IN THE SUPREME COURT OF THE UNITED STATES

MELISSA QUINTANILLA, MARTI GAIL MCPHERSON, MICHAEL SCOTT
COOKSEY, LATOYA LATRICE GOLDEN, AND DAVID WAYNE FRAZIER, JR.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

Under 18 U.S.C. 3582(c)(2), a "court may reduce the term of imprisonment" 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 * * * if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." The questions presented are:

1. Whether a defendant whose advisory Sentencing Guidelines range resulted from applying the career-offender guidelines, and exceeded the range that would otherwise apply under the drug-quantity guidelines, is eligible for a sentence reduction under Section 3582(c)(2) when the Sentencing Commission has lowered the drug-quantity guidelines range but not the career-offender guidelines range.

2. Whether the commentary to Sentencing Guidelines § 1B1.10 conflicts with Section 3582(c)(2).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A5) is reported at 868 F.3d 315. The orders of the district court are not published in the Federal Supplement but are available at 2016 WL 7107898 and 2016 WL 9087361.

JURISDICTION

The judgment of the court of appeals was entered on August 16, 2017. The petition for a writ of certiorari was filed on November 14, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following guilty pleas in the United States District Court for the Western District of Texas, petitioners were convicted, in separate criminal cases, of various federal drug offenses. Pet. App. A2-A3. The advisory Sentencing Guidelines range in each case was calculated by applying Sentencing Guidelines § 4B1.1, the career-offender guideline. Id. at A3. After the U.S. Sentencing Commission (Commission) lowered the guidelines applicable by default to most drug offenses, petitioners filed motions for sentence reductions under 18 U.S.C. 3582(c)(2). The district court granted reductions to each petitioner. Ibid. The court of appeals consolidated the cases and reversed. Id. at A1-A5.

1. This joint petition is brought by five petitioners convicted of federal drug offenses between 2006 and 2013. Each petitioner fell under the career-offender provision of the advisory Sentencing Guidelines, which applies (as relevant here) to adult defendants convicted of a controlled substance felony after two prior felony convictions for "a crime of violence or a controlled substance offense." Sentencing Guidelines § 4B1.1. In each case, petitioners' guidelines range under the career-offender provision exceeded the range that would otherwise apply under the drug-offense provision, Sentencing Guidelines § 2D1.1. See Pet. App. A2-A3. In such a case, Section 4B1.1 directs that the career-offender guidelines "shall apply."

a. In 2013, petitioner Quintanilla pleaded guilty to possession with intent to distribute marijuana, in violation of 21 U.S.C. 841(a)(1). 13-cr-87 Presentence Investigation Report (Quintanilla PSR) 1. The base offense level for that offense is 20. Id. ¶ 14. Because petitioner Quintanilla had two prior felony convictions for crimes of violence, she qualified as a career offender under Sentencing Guidelines § 4B1.1, which required a base offense level of 32 and resulted in an advisory sentencing range of 151 to 188 months of imprisonment. Quintanilla PSR ¶¶ 22, 52. At sentencing, the district court granted the government's motion for a downward departure to reflect petitioner Quintanilla's substantial assistance to law enforcement, see Sentencing Guidelines § 5K1.1, and imposed a sentence of 100 months of imprisonment, to be followed by three years of supervised release, 16-50677 C.A. ROA (Quintanilla ROA) 43-44.

b. In 2011, petitioner McPherson pleaded guilty to possession with intent to distribute marijuana, in violation of 21 U.S.C. 841(a)(1). 10-cr-299 Presentence Investigation Report (McPherson PSR) 1. The base offense level for that offense is 26. Id. ¶ 12. Because petitioner McPherson had two prior felony convictions for controlled substance offenses, she qualified as a career offender under Sentencing Guidelines § 4B1.1, which required a base offense level of 34 and resulted in an advisory sentencing range of 188 to 235 months of imprisonment. McPherson

PSR ¶¶ 18, 48. At sentencing, the district court granted the government's motion for a downward departure to reflect petitioner McPherson's substantial assistance to law enforcement, see Sentencing Guidelines § 5K1.1, and imposed a sentence of 151 months of imprisonment, to be followed by five years of supervised release, 16-50688 C.A. ROA (McPherson ROA) 34-35.

c. In 2006, petitioner Cooksey pleaded guilty to conspiracy to possess with intent to distribute methamphetamine and crack cocaine, in violation of 21 U.S.C. 841(a)(1) and 846. 5-cr-255 Presentence Investigation Report (Cooksey PSR) ¶¶ 1-3. The base offense level for that offense is 26. Id. ¶ 10.¹ Because petitioner Cooksey had more than two prior felony convictions for controlled substance offenses, he qualified as a career offender under Sentencing Guidelines § 4B1.1, which required a base offense level of 37 and resulted in an advisory sentencing range of 262 to 327 months of imprisonment. Cooksey PSR ¶¶ 28, 65. At sentencing, the district court granted the government's motion for a downward departure to reflect petitioner Cooksey's substantial assistance to law enforcement, see Sentencing Guidelines § 5K1.1, and imposed a sentence of 210 months of imprisonment, to be followed by eight years of supervised release, 16-50689 C.A. ROA (Cooksey ROA) 42-43.

¹ Petitioner Cooksey also pleaded guilty to possession of counterfeit government obligations, in violation of 18 U.S.C. 472. Cooksey PSR ¶ 1. That conviction is not at issue here.

d. In 2012, petitioner Golden pleaded guilty to conspiracy to distribute crack cocaine, in violation of 21 U.S.C. 841(a)(1) and 846. 11-cr-332 Presentence Investigation Report (Golden PSR) ¶¶ 1-4. The base offense level for that offense is 32. Id. ¶ 39. Because petitioner Golden had two prior felony convictions for controlled substance offenses, she qualified as a career offender under Sentencing Guidelines § 4B1.1, which required a base offense level of 37 and resulted in an advisory sentencing range of 262 to 327 months of imprisonment. Golden PSR ¶¶ 46, 76. The district court sentenced petitioner Golden to 130 months of imprisonment, to be followed by five years of supervised release. 16-50709 C.A. ROA (Golden ROA) 65-66. The court later granted the government's motion for a sentence reduction to reflect petitioner Golden's substantial assistance to law enforcement, see Fed. R. Crim. P. 35(b); Sentencing Guidelines § 5K1.1, and reduced petitioner Golden's sentence to 96 months of imprisonment, Golden ROA at 136.

e. In 2011, petitioner Frazier pleaded guilty to conspiracy to traffic in 280 grams or more of cocaine base, in violation of 21 U.S.C. 841(a)(1) and 846. 11-cr-261 Presentence Investigation Report (Frazier PSR) ¶¶ 1-3. The base offense level for that offense is 32. Id. ¶ 16. Because petitioner Frazier had more than two prior felony convictions for controlled substance offenses, he qualified as a career offender under Sentencing Guidelines § 4B1.1, which required a base offense level of 37 and

resulted in an advisory sentencing range of 262 to 327 months of imprisonment. Frazier PSR ¶¶ 23, 57. At sentencing, the district court granted the government's motion for a downward departure to reflect petitioner Frazier's substantial assistance to law enforcement, see Sentencing Guidelines § 5K1.1, and imposed a sentence of 188 months of imprisonment, to be followed by ten years of supervised release, 16-50715 C.A. ROA (Frazier ROA) 51-52.

2. a. A court generally "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. 3582(c); see Dillon v. United States, 560 U.S. 817, 819 (2010). One exception is specified in 18 U.S.C. 3582(c)(2), which provides that a court may "reduce" the sentence 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," ibid., after considering the applicable statutory sentencing factors set forth in 18 U.S.C. 3553(a), "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission," 18 U.S.C. 3582(c)(2).

In November 2014, the Sentencing Commission issued Amendment 782 to the Sentencing Guidelines, which reduced the base offense level corresponding to most drug quantities. Sentencing Guidelines App. C Supp., Amend. 782 (Nov. 1, 2014). The Commission made Amendment 782 retroactive, with the caveat that a court may "not order a reduced term of imprisonment based on Amendment 782 unless

the effective date of the court's order is November 1, 2015, or later." Id. Amend. 788 (Nov. 1, 2014).

b. Relying on the Commission's reduction of the drug-quantity guidelines in Amendment 782, petitioners moved for reductions of their sentences under Section 3582(c)(2). In each case, the district court determined that petitioners were eligible for sentence reductions on the theory that their sentences were "based on" the drug-quantity guidelines that the Commission lowered in Amendment 782. Pet. App. A3 (citing 18 U.S.C. 3582(c)(2) and Freeman v. United States, 564 U.S. 522 (2011)). The court reduced petitioner Quintanilla's sentence to 84 months of imprisonment, Quintanilla ROA 110; petitioner McPherson's sentence to 92 months of imprisonment, McPherson ROA 109; petitioner Cooksey's sentence to 168 months of imprisonment, Cooksey ROA 140; petitioner Golden's sentence to 80 months of imprisonment, Golden ROA 130; and petitioner Frazier's sentence to 151 months of imprisonment, Frazier ROA 175.

3. The government appealed. After consolidating the cases, the court of appeals reversed. Pet. App. A1-A6. The court determined that petitioners were not eligible for sentence reductions under Section 3582(c)(2) because their sentences were not "based on" the drug-quantity guidelines that the Commission lowered in Amendment 782. Id. at A4-A5. The court explained that petitioners' sentences were instead based on the career-offender

guidelines, which "shall apply" if "the offense level for a career offender * * * is greater than the offense level otherwise applicable," as was the case for all petitioners. Id. at A3 (quoting Sentencing Guidelines § 4B1.1(b)); see id. at A5. The court similarly observed that under Sentencing Guidelines § 1B1.10(a)(1), the policy statement applicable to sentence reductions under Section 3582(c)(2), "the 'guideline range applicable to that defendant,' was the career offender range." Pet. App. A5 (quoting Sentencing Guidelines § 1B1.10(a)(1)). Thus, because "Amendment 782 did not lower the guideline range under § 4B1.1, none of the defendants is entitled to a sentence reduction under § 1B1.10(a)(1) or § 3582(c)(2)." Ibid.

The court of appeals noted that it had adopted a similar holding with respect to Amendment 782 in United States v. Valdez, 615 Fed. Appx. 191, 192 (5th Cir. 2015) (per curiam), and with respect to a previous amendment to the crack-cocaine guidelines in United States v. Anderson, 591 F.3d 789 (5th Cir. 2009) (per curiam). Pet. App. A4. The court added that those results were "consistent with the result reached by other circuits." Id. at A4 & n.8 (citing cases). The court identified "no cases reaching the district court's contrary result." Id. at A4.

The court of appeals also rejected petitioners' argument that the commentary to Section 1B1.10 conflicts with Section 3582(c)(2). In the court's view, its decisions construing the

interaction between the “based on” requirement of Section 3582(c)(2) and the career-offender guidelines foreclosed petitioners’ argument. Pet. App. A5.

ARGUMENT

Petitioners contend (Pet. 6-13) that they are eligible for sentence reductions under 18 U.S.C. 3582(c)(2) because the Sentencing Commission lowered the drug-quantity guidelines that would have applied to their sentences if they had not been subject to the career-offender guidelines. The court of appeals correctly rejected that argument because petitioners’ sentences were “based on” the career-offender guidelines, which the Commission has not lowered, rather than on the drug-quantity guidelines. Petitioners do not contend that any court of appeals has reached a different conclusion. Petitioners also contend (Pet. 13-21) that the commentary to Sentencing Guidelines § 1B1.10 contradicts Section 3582(c)(2). The commentary, however, is consistent with the statute, and no circuit conflict exists on the issue. Further review is unwarranted. The Court may, however, wish to hold this case pending its resolution of Hughes v. United States, cert. granted, No. 17-155 (oral argument scheduled for Mar. 27, 2018), and Koons v. United States, cert. granted, No. 17-5716 (oral argument scheduled for Mar. 27, 2018), which present questions involving interpretation of the term “based on” in Section 3582(c)(2) in related contexts.

1. As the court of appeals correctly held, a defendant who is subject to a career-offender guidelines range that exceeds the otherwise-applicable guidelines range for drug offenses is not eligible for a sentence reduction under 18 U.S.C. 3582(c)(2) when the latter range is retroactively lowered. Pet. App. A4-A5.

a. Section 3582(c)(2) sets forth a “narrow exception[]” to the “rule of finality” that generally governs federal criminal sentences. Freeman v. United States, 564 U.S. 522, 526 (2011) (plurality opinion). Section 3582(c)(2) provides in full:

[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), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, 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.

18 U.S.C. 3582(c)(2).

The plain text of Section 3582(c)(2) creates a threshold eligibility requirement that limits sentence reductions to cases in which the defendant’s sentence was “based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” 18 U.S.C. 3582(c)(2). That threshold eligibility requirement renders Section 3582(c)(2) inapplicable to defendants who were sentenced pursuant to a career-offender guidelines range, but who seek to rely on a retroactive amendment to the otherwise-applicable

guidelines range, such as the drug-quantity guidelines range. Such a defendant's sentence was not "based on" any "sentencing range that has subsequently been lowered by the Sentencing Commission." Ibid. Rather, it was based the career-offender guidelines, which "shall apply" if they are "greater than the offense level otherwise applicable," Sentencing Guidelines § 4B1.1(b), and which the Sentencing Commission has not lowered, see Pet. App. 4-5.

Petitioners acknowledge (Pet. 10) that their guidelines ranges were "ultimately governed by the career offender guideline." They nevertheless contend that their sentences were "based on" the drug-quantity guidelines, 18 U.S.C. 3582(c)(2), because the drug-quantity guidelines were part of the "analytic framework the judge used to determine" their sentences, Pet. 11 (quoting Freeman, 564 U.S. at 530 (plurality opinion)). Even under the Freeman plurality's position, however, petitioners would not be eligible for sentence reductions under Section 3582(c)(2), because the drug-quantity guidelines were not relevant to the "analytic framework the judge used to determine" their sentences in any of the ways that the Freeman plurality described. Ibid. The district court, for example, did not use the drug-quantity guidelines "as the beginning point to explain the decision to deviate" from the guidelines or to evaluate whether to accept petitioners' pleas. Freeman, 564 U.S. at 529 (plurality opinion).

At most, the drug-quantity guidelines were part "of the sentencing calculation" and were "included in the presentence report" before they were superseded by the career-offender guidelines that "ultimately governed" petitioners' sentences. Pet. 10. That is too far removed from the basis of petitioners' sentences to qualify under any of the opinions in Freeman.

b. The court of appeals also correctly determined that petitioners are not eligible for sentence reductions under Section 3582(c)(2) because such reductions would be inconsistent with Sentencing Guidelines § 1B1.10. Pet. App. A4-A5. Section 3582(c)(2) directs that any sentence reduction must be "consistent with applicable policy statements issued by the Sentencing Commission," one of which is Sentencing Guidelines § 1B1.10. 18 U.S.C. 3582(c)(2). Thus, Section 3582(c)(2) requires a sentencing "court to follow the Commission's instructions in [Sentencing Guidelines] § 1B1.10 to determine the prisoner's eligibility for a sentence modification." Dillon v. United States, 560 U.S. 817, 827 (2010).

Sentencing Guidelines § 1B1.10(a)(1) permits a reduction only where "the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines." A reduction is "not authorized" if the amendment "does not have the effect of lowering the defendant's applicable guideline range." Id. § 1B1.10(a)(2)(B). The binding commentary

to the policy statement defines "applicable guideline range" as "the guideline range that corresponds to the offense level and criminal history category * * * determined before consideration of any departure provision in the Guidelines Manual or any variance." Id. § 1B1.10 comment. (n.1(A)); see Stinson v. United States, 508 U.S. 36, 38 (1993) (Sentencing Commission's commentary is binding unless it contradicts a statute or the Constitution).

To the extent petitioners contend (Pet. 11) that the drug-quantity guidelines "influenced the ultimate sentence chosen by the court" because their "ultimate sentences were lower than the career offender guideline range," ibid., they disregard Section 1B1.10's requirement that the "applicable guideline range" be determined "before consideration of any departure provision." Sentencing Guidelines § 1B1.10, comment. (n.1(A)). Here, petitioners' "applicable guideline range * * * before consideration of any departure provision," ibid., was the career-offender guideline range, see id. § 4B1.1(b) (career-offender guidelines "shall apply" if they are "greater than the offense level otherwise applicable"). The career-offender guideline range has not "subsequently been lowered as a result of an amendment to the Guidelines." Id. § 1B1.10(a)(1). By the terms of the policy statement itself, therefore, a reduction is "not authorized." Id. § 1B1.10(a)(2); see Pet. App. A5; Pet. 20.

c. Petitioners do not identify any circuit that would view them as eligible for a sentence reduction in these circumstances. To the contrary, as the court of appeals noted, the Eighth Circuit reached the same result as the decision below in a published decision, see Pet. App. A4 n.8 (citing United States v. Thomas, 775 F.3d 982, 983 (8th Cir. 2014)), and several other circuits reached the same result in unpublished decisions, see ibid. (citing United States v. Banyai, 637 Fed. Appx. 532 (10th Cir. 2016); United States v. Hall, 628 Fed. Appx. 681 (11th Cir. 2015) (per curiam); United States v. Fritz, 621 Fed. Appx. 196 (4th Cir. 2015) (per curiam); United States v. Steel, 609 Fed. Appx. 851 (6th Cir. 2015)). The court of appeals found “no cases reaching the district court’s contrary result,” id. at A4, and petitioners do not cite any.

2. Petitioners’ related contention (Pet. 13-21) that the commentary to Section 1B1.10 conflicts with Section 3582(c)(2) also lacks merit. As an initial matter, even if petitioners’ claim were correct, it would not change the fact that Section 3582(c)(2) itself forecloses their eligibility for sentence reductions because their sentences were “based on” the career-offender guidelines, not any guidelines subsequently lowered by the Commission. 18 U.S.C. 3582(c)(2); see pp. 10-12, supra; Pet. 21 (“The statute controls” contrary commentary.).

In any event, petitioners' contention lacks merit. The commentary to Section 1B1.10 does not "attempt[] to limit courts' jurisdiction to entertain a motion to reduce" a sentence. Pet. 19. Section 3582(c)(2) recognizes that reductions are authorized only when they are "consistent with applicable policy statements issued by the Sentencing Commission," 18 U.S.C. 3582(c)(2), and the Commission has statutory authority to "specify" both "in what circumstances" and "by what amount" sentences reflecting a now-lowered guideline may be adjusted retroactively, 28 U.S.C. 994(u). The commentary to Sentencing Guidelines § 1B1.10 clarifies that a defendant is eligible for a sentence reduction under Section 3582(c)(2) only if an amendment to the guidelines "lowers the [defendant's] applicable guideline range" independent of any departure or variance. Sentencing Guidelines § 1B1.10, comment. (n.1(A)). That is fully consistent with Section 3582(c)(2)'s requirement that only defendants sentenced "based on a sentencing range that has subsequently been lowered by the Sentencing Commission" are eligible for sentence reductions. 18 U.S.C. 3582(c)(2). And petitioners' contention (Pet. 20) that the commentary is inconsistent with Freeman simply repeats their misinterpretation of the opinions in that case.

Petitioners do not suggest any circuit conflict on the validity of the commentary to Sentencing Guidelines § 1B1.10. And the courts of appeals that have considered challenges similar to

petitioners' have rejected them. See, e.g., United States v. Erskine, 717 F.3d 131, 136-138 (2d Cir. 2013); United States v. Colon, 707 F.3d 1255, 1259 (11th Cir. 2013); United States v. Berberena, 694 F.3d 514, 520-523 (3d Cir. 2012), cert. denied, 568 U.S. 1201 (2013); United States v. Anderson, 686 F.3d 585, 589-590 (8th Cir. 2012), cert. denied, 568 U.S. 1176 (2013); see also United States v. Horn, 679 F.3d 397, 401-402 (6th Cir.), cert. denied, 568 U.S. 934 (2012); United States v. Fox, 631 F.3d 1128, 1132-1133 (9th Cir.), cert. denied, 565 U.S. 868 (2011).

3. After the filing of this petition for a writ of certiorari, the Court granted certiorari to consider two other cases involving the interpretation of the term "based on" in Section 3582(c)(2). In Hughes, supra, the Court will consider the application of Section 3582(c)(2) to a defendant who entered into a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C). In Koons, supra, the Court will consider the application of Section 3582(c)(2) to defendants who were subject to statutory mandatory minimum sentences. Although those cases involve circumstances different from the circumstances here, the Court's interpretation of the term "based on" in those cases could potentially bear on the appropriate resolution of this case. The Court may therefore wish to hold the petition for a writ of certiorari in this case pending the decisions in Hughes and Koons and then dispose of it as appropriate in light of those decisions.

CONCLUSION

The petition for a writ of certiorari should be denied, or, in the alternative, held for Hughes v. United States, No. 17-155, and Koons v. United States, No. 17-5716, and then disposed of as appropriate in light of those decisions.

Respectfully submitted.

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