

In the Supreme Court of the United States

October Term, 2017

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

V.

UNITED STATES OF AMERICA

**PETITIONERS' REPLY TO THE BRIEF FOR THE
UNITED STATES IN OPPOSITION**

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INTRODUCTION

Petitioners ask the Court to grant a writ of certiorari to clarify that defendants who are sentenced under the career offender guideline, §4B1.1, are not automatically foreclosed from receiving a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) when the Sentencing Commission amends the Chapter Two guideline otherwise applicable to that defendant. Petitioners argue that, under the *Freeman* plurality’s reasoning, the drug offense guideline, §2D1.1, was part of the analytical framework that the district court used to arrive at Petitioners’ sentences. Therefore, their sentences were “based on” the amended guideline. Petitioners argue that the Commission’s amendment to policy statement §1B1.10 Application Note 1(A), defining “applicable guideline range” in a manner that excludes terms of imprisonment that were in fact “based on” the drug guideline, should be disregarded as inconsistent with § 3582(c)(2).

The Government responds that the Court should not grant certiorari because Petitioners’ sentences were “based on” the career offender guideline, not the drug guideline; Petitioners are not eligible for a reduction under policy statement §1B1.10 because the §2D1.1 amendment did not lower their applicable guideline

ranges; and Petitioners would not be eligible for relief in any circuit. In the alternative, the Government requests that the Court hold the petition for a writ of certiorari pending the decisions 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).

Petitioners reply.

ARGUMENTS AND AUTHORITIES

I. The Court Should Hold the Petition for Writ of Certiorari Pending Decisions in *Hughes* and *Koons*.

After Petitioners filed their petition for writ of certiorari, this Court granted certiorari in two cases that address the interpretation of “based on” in 18 U.S.C. § 3582(c)(2). *Hughes v. United States*, *cert. granted*, No. 17-155 (oral argument scheduled for Mar. 27, 2018); *Koons v. United States*, *cert. granted*, No. 17-5716 (same). The Court addressed “based on” in *Freeman v. United States*, holding that pleading guilty pursuant to a Federal Rule of Criminal Procedure 11(c)(1)(C) agreement was not a categorical bar to receiving a sentence reduction under § 3582(c)(2). 564 U.S. 522, 525–26 (2011) (Kennedy, J., plurality); *id.* at 539–40 (Sotomayor, J., concurring). Petitioners rely on the *Freeman* plurality’s interpretation of “based on” to argue that they are eligible for a reduction under § 3582(c)(2) because their sentences are “based on” the amended drug guideline, even though the career offender guideline ultimately produced their advisory Guidelines ranges. Pet. App. 7–13. Petitioners further argue that, given the *Freeman* plurality’s interpretation of “based on” in § 3582(c)(2), commentary in Application Note 1(A) defining “applicable guideline range” should be disregarded as inconsistent with § 3582(c)(2). Pet. App. 17–21.

Given that the Court is asked to interpret “based on” in both *Hughes* and *Koons*, albeit in different contexts, those cases will likely affect the resolution of this case. The Government also recognizes that the resolution of *Hughes* and *Koons* “could potentially bear on the appropriate resolution of this case.” B.I.O. 16. Accordingly, Petitioners request that the Court hold the petition for a writ of certiorari in this case pending the decisions in *Hughes* and *Koons*.

II. The Courts, Not the Sentencing Commission, Determine Whether a Sentence Is Based on a Lowered Sentencing Range.

The Government appears to argue that, even if Petitioners’ sentences were “based on” the amended guideline for purposes of § 3582(c)(2), they would be ineligible because policy statement §1B1.10 restricts eligibility to defendants for whom an amendment to the guidelines “lowers the applicable guideline range” independent of any departure or variance. B.I.O. 15 (citing U.S.S.G. §1B1.10(a) & comment. (n.1(A))). However, in § 3582(c)(2), Congress did not condition eligibility—whether a sentence is “based on a sentencing range that has subsequently been lowered by the Sentencing Commission”—on the Commission’s “applicable policy statements[.]” § 3582(c)(2); *see* Pet. App. 14–15. Only the discretionary extent of the reduction must be consistent with applicable

policy statements. § 3582(c)(2) (“the court may reduce the term of imprisonment . . . if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission”); *see* Pet. App. 14–15.

In arguing otherwise, the Government relies on dicta in *Dillon v. United States*, wherein the Court stated that “§ 3582(c)(2) requires the court to follow the Commission’s instructions in § 1B1.10 to determine the prisoner’s eligibility for a sentence modification and the extent of the reduction authorized.” 560 U.S. 817, 827 (2010); *see* B.I.O. 12. The question in *Dillon*, however, was not whether the defendant’s sentence was based on an amended guideline range for purposes of § 3582(c)(2) or even whether policy statement §1B1.10(a), which addresses eligibility for a reduction, is binding. *Dillon*, 650 U.S. at 819. Rather, *Dillon* addressed whether *United States v. Booker*¹ requires treating policy statement §1B1.10(b), which governs the extent of a reduction, as nonbinding. *Id.*

In concluding that policy statement §1B1.10(b) is binding, the Court considered the limited nature of § 3582(c)(2) proceedings

¹ 543 U.S. 220 (2005).

and the “substantial role Congress gave the Commission with respect to sentence-modification proceedings.” *Id.* at 826. The Court explained that Congress charged the “Commission both with deciding whether to amend the Guidelines, [28 U.S.C.] § 994(o), and with determining whether and to what extent an amendment will be retroactive, [28 U.S.C.] § 994(u).” *Id.* The Commission’s statements also “dictat[e] ‘by what amount’ the sentence of a prisoner serving a term of imprisonment affected by the amendment ‘may be reduced.’” *Id.* at 826 (quoting § 994(u)). But the Court did not specify that Congress charged the Commission with defining whether a sentence was based on a particular sentencing range. *See id.* at 826–27. That decision remains with the district court. *See* Pet. App. 16–17.

Accordingly, if the Court interprets “based on” in such a way that includes sentences for which the drug guideline was part of the sentencing court’s analytical framework even though the ultimate range was produced by the career offender guideline, the Court should disregard the definition of “applicable guideline range” in Application Note 1(A) as inconsistent with § 3582(c)(2). *See* Pet. App. 20. Petitioners would then be eligible for sentence reductions.

CONCLUSION

FOR THE FOREGOING REASONS, the Petition for Writ of Certiorari should be held pending decisions in *Hughes* and *Koons* and then, if consistent with those decisions, granted.

Respectfully submitted.

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