

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-30346
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 25, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL SHORT, also known as Nate,

Defendant-Appellant

Appeals from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:96-CR-232-1

Before KING, DENNIS, and COSTA, Circuit Judges.

PER CURIAM:*

Michael Short, federal prisoner # 22355-034, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for a sentence reduction pursuant to Amendments 591 and 607. He contends that the district court erroneously determined that Amendment 591 did not apply because he was not convicted of an offense referenced in U.S.S.G. § 2D1.2. In addition, Short asserts that

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the district court did not follow the correct procedure in calculating his original advisory guidelines range.

We review for abuse of discretion a district court's decision whether to reduce a sentence pursuant to § 3582(c)(2). *United States v. Evans*, 587 F.3d 667, 672 (5th Cir. 2009). Amendments 591 and 607 did not have the effect of lowering Short's guidelines range. Therefore, Short was not eligible for a sentence reduction under § 3582(c)(2). *See Dillon v. United States*, 560 U.S. 817, 826-27 (2010); *United States v. Anderson*, 591 F.3d 789, 791 (5th Cir. 2009); *United States v. Wilson*, 267 F. App'x 317, 318 (5th Cir. 2008). Further, Short's claims regarding the validity of his original sentence are not cognizable in a § 3582(c)(2) motion. *See United States v. Hernandez*, 645 F.3d 709, 712 (5th Cir. 2011). The district court did not abuse its discretion in denying Short's motion. *See Dillon*, 560 U.S. at 826-27.

AFFIRMED.

Michael Short. Keith Butler assisted Short in one drug transaction in August of 1996. He was described as an "errand boy" for Short.

52. Troyel Ross was an enforcer and distributor for the Short organization. Denise Anthony was to receive a drug package for Michael Short on at least one occasion. Isaac Kitt was attempting to sell Michael Short, approximately one and one-fourth ounces of heroin when Short was arrested for the instant offense. The total drug amount attributable to Michael Short is 595.34 grams of heroin.

Victim Impact

53. The victim of the murder was Derrick Hubbard. Hubbard's mother, Diane Hubbard, was interviewed for this report. She described herself and the rest of her family as traumatized by her son's death. She believes that the FBI should have stopped Short before the murder of her son, as the FBI was aware of Short's drug dealing activities. She further indicated that Short threatened the lives of several other people prior to her son's death. Her son was the father of two children, ages nine and seven, both of whom are experiencing problems at home and at school as a result of their father's death. Regarding Short's sentence, Mrs. Hubbard describes him as a dangerous person. He developed a system in which other people became obligated to him for drugs and money, and he had these people under his control. She hopes that Short receives a lengthy sentence.

Adjustment for Obstruction of Justice

54. The probation officer has no information to suggest the defendant impeded or obstructed justice.

Adjustment for Acceptance of Responsibility

55. The defendant did not provide a statement for this report.

Offense Level Computations

56. The 1996 Edition of the Guidelines Manual has been used in this case.
57. All of the counts for which the defendant was convicted were part of the same scheme of criminal activity, which involved distribution of drugs, gun violations, money laundering and murder. Pursuant to U.S.S.G. § 3D1.2(a), the counts of conviction, with the exception of Count 5, are grouped, and the highest applicable offense level is applied. As to Count 5 the statute requires a five year consecutive sentence. The guideline calculations for all other counts are given below.
58. **Base Offense Level:** The United States Sentencing Guideline for a violation of 18 U.S.C. § 924(j)(1) is found at U.S.S.G. § 2K2.1. At U.S.S.G. § 2K2.1(c)(1)(B), there is across reference indicating that if death resulted, apply the most analogous offense guideline from Chapter Two, Part A (Homicide). In Count 4, Short used 43