

No. 17-8707

IN THE SUPREME COURT OF THE UNITED STATES

CHAD EDWARD NOZISKA, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a criminal defendant whose term of imprisonment was based on a statutory minimum sentence and substantial assistance to the government is eligible for a sentence reduction under 18 U.S.C. 3582(c)(2) when the Sentencing Commission retroactively lowers a Sentencing Guidelines range that did not affect the imposition of his sentence.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-2) is not published in the Federal Reporter but is reprinted at 696 Fed. Appx. 253. The order of the district court (Pet. App. 3) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 17, 2017. A petition for rehearing was denied on January 26, 2018 (Pet. App. 4). The petition for a writ of certiorari was filed on April 25, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Montana, petitioner was convicted of conspiracy to distribute methamphetamine, in violation of 21 U.S.C. 841(a)(1) and 846. Judgment 1. He was sentenced to 210 months of imprisonment, to be followed by ten years of supervised release. Id. at 2-3. Petitioner subsequently moved for a sentence reduction under 18 U.S.C. 3582(c)(2). The district court denied his motion. Pet. App. 3. The court of appeals affirmed. Id. at 1-2.

1. Petitioner participated in an interstate drug-trafficking conspiracy involving methamphetamine. See Presentence Investigation Report (PSR) ¶¶ 10-12. He pleaded guilty to conspiring to distribute 500 or more grams of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and 846, an offense that carried a statutory minimum sentence of 20 years of imprisonment because of his prior felony drug convictions. Plea Agreement ¶ 2; see 21 U.S.C. 841(b)(1)(A)(viii). He also agreed to provide cooperation to the government. Plea Agreement ¶ 8.

Before sentencing, the Probation Office calculated petitioner's initial advisory sentencing range starting from a base offense level of 32, which it reduced by three levels to reflect his acceptance of responsibility. PSR ¶¶ 20-29. The resulting offense level of 29, combined with petitioner's criminal history category of IV, yielded an initial advisory range of 121

to 151 months of imprisonment. PSR ¶ 71. Because that initial range fell below the statutory minimum of 20 years, the Probation Office determined that the “guideline imprisonment range is 20 years.” Ibid. (emphasis omitted); see Sentencing Guidelines § 5G1.1(b) (“Where a statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence.”).

At sentencing, the government moved for a departure from the 20-year minimum pursuant to 18 U.S.C. 3553(e), which allows a court to impose a sentence below a statutory minimum “so as to reflect a defendant’s substantial assistance in the investigation or prosecution of another person who has committed an offense.” Ibid. The government recommended a sentence of 204 months in prison, a 15% reduction below the 240-month minimum. See 2/17/12 Sent. Tr. (Tr.) 27. The district court granted the government’s motion for a departure from the statutory minimum, but imposed a sentence of 210 months in prison. Id. at 35-36.

2. After petitioner began serving his sentence, the United States Sentencing Commission retroactively lowered the advisory guidelines ranges for most drug offenses. See Sentencing Guidelines App. C Supp., Amends. 782, 788 (Nov. 1, 2014). Under those amendments, a calculation of petitioner’s advisory sentencing range under the default drug guidelines would result in

a range even further below the 20-year statutory minimum. Petitioner sought a sentence reduction under 18 U.S.C. 3582(c) (2), which authorizes a district court to reduce the sentence "of a defendant who [was] sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." Ibid.

The district court denied petitioner's motion, reasoning that he was not eligible for a sentence reduction under Section 3582(c) (2) because his sentence "was not based on a guideline range affected by" the subsequent amendments to the Guidelines. Pet. App. 3. The court explained that the record of the initial sentencing "clearly indicates that the sentencing judge's decision about the extent of the substantial-assistance departure was not based on or affected by the guidelines range that would have applied in the absence of a statutory mandatory minimum." Ibid.

3. The court of appeals affirmed in an unpublished memorandum opinion. Pet. App. 4. The court determined that the record "ma[de] clear that the district court imposed [petitioner's] sentence for reasons unrelated to the guideline range lowered by" the amendments to the drug-quantity guidelines and that petitioner's sentence was thus not "based on" a since-lowered sentencing range as necessary to qualify for a reduction under Section 3582(c) (2). Id. at 2 (citing United States v.

Rodriguez-Soriano, 855 F.3d 1040, 1045-1046 (9th Cir. 2017), cert. denied, No. 17-6292 (June 11, 2018)).

ARGUMENT

Petitioner contends (Pet. 5-11) that he is eligible for a sentence reduction under 18 U.S.C. 3582(c)(2) because the Sentencing Commission lowered the drug-quantity guidelines applicable to his offense. But this Court rejected a materially identical claim in Koons v. United States, 138 S. Ct. 1783 (2018), which was decided after the petition for a writ of certiorari in this case was filed. Petitioner's claim is foreclosed by Koons. Moreover, this Court subsequently denied review in United States v. Rodriguez-Soriano, 855 F.3d 1040 (9th Cir. 2017), cert. denied, No. 17-6292 (June 11, 2018), which was the basis of the unpublished decision below. The petition likewise should be denied.

1. In Koons, this Court considered claims by criminal defendants who -- like petitioner here -- were convicted of drug-trafficking crimes that subjected them to statutory minimum sentences that exceeded their otherwise-applicable advisory guidelines ranges. 138 S. Ct. at 1787; see PSR ¶ 71. The district court in Koons "discarded the advisory ranges in favor of the mandatory minimum sentence" and then "departed downward from the mandatory minimum because of petitioners' substantial assistance." Koons, 138 S. Ct. at 1787. The court in Koons did not "consider

the original drug Guidelines ranges that it had earlier discarded.”
Ibid.

The petitioners in Koons, like petitioner here, sought sentence reductions under 18 U.S.C. 3582(c)(2) after the Sentencing Commission lowered the default advisory guidelines ranges corresponding to their drug offenses. This Court explained, however, that the Koons petitioners’ “sentences were not ‘based on’ their lowered Guidelines ranges” because the district court “did not consider those ranges in imposing its ultimate sentences.” Koons, 138 S. Ct. at 1788. The Court accordingly held that the petitioners were ineligible for sentence reductions under Section 3582(c)(2), because they were not sentenced “based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” 18 U.S.C. 3582(c)(2); see Koons, 138 S. Ct. at 1787.

2. Koons governs here. After calculating petitioner’s default advisory guidelines range (121-151 months), the district court discarded that range because the higher 240-month statutory minimum superseded it and thus became the applicable range. Tr. 6; see PSR ¶ 71; Sentencing Guidelines § 5G1.1(b). And in determining the extent of the departure below the statutory minimum in response to the government’s substantial-assistance motion, the court did not revisit the initial, “discarded” range. Koons, 138 S. Ct. at 1787; see Pet. App. 3 (noting that petitioner’s sentence “was not based on or affected by the guideline range that would have applied

in the absence of a statutory mandatory minimum"). The court of appeals thus found that the record "ma[de] clear that the district court imposed [petitioner's] sentence for reasons unrelated to the guideline range lowered by" the 2014 amendments to the drug-quantity Guidelines. Pet. App. 2.

The court of appeals correctly determined that petitioner was not eligible for a sentence reduction under Section 3582(c)(2) because his sentence was not "based on" a subsequently lowered sentencing range. Pet. App. 2; see Koons, 138 S. Ct. at 1787-1788. The court, moreover, relied on a circuit precedent that this Court declined to review shortly after its decision in Koons. See Pet. App. 2 (citing Rodriguez-Soriano, 855 F.3d at 1045-1046). Further review in this case is likewise unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 2018