

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 19 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SERGIO RAMIREZ, a.k.a. Edgar Carlon,

Defendant-Appellant.

No. 17-50193

D.C. No. 2:09-cr-00229-GAF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Terry J. Hatter, Jr., District Judge, Presiding

Submitted March 13, 2018**

Before: LEAVY, M. SMITH, and CHRISTEN, Circuit Judges.

Sergio Ramirez appeals pro se from the district court's order denying his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Ramirez contends that he is eligible for a sentence reduction under

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Amendment 782 to the Sentencing Guidelines. We review de novo whether a district court had authority to modify a sentence under section 3582(c)(2). *See United States v. Leniear*, 574 F.3d 668, 672 (9th Cir. 2009). Contrary to Ramirez's contention, the record reflects that the sentencing court determined that his offense involved 4.8 kilograms of actual methamphetamine. Even after Amendment 782, the base offense level for that drug amount is 38. *See* U.S.S.G. § 2D1.1(c)(1) (2014). Because Amendment 782 did not lower Ramirez's applicable guideline range, the district court correctly concluded that Ramirez is ineligible for a sentence reduction. *See* 18 U.S.C. § 3582(c)(2); U.S.S.G. § 1B1.10(a)(2)(B); *Leniear*, 574 F.3d at 673-74.

Ramirez's other claims are not properly before us because they are outside the scope of a section 3582(c)(2) motion. *See Dillon v. United States*, 560 U.S. 817, 831 (2010).

AFFIRMED.

**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. CR 09-229 GAF-1Defendant SERGIO RAMIREZSocial Security No. U N K akas: CARLON, Edgar Celis

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
07	12	2010

COUNSEL**WITH COUNSEL**William Domnarski Appointed

(Name of Counsel)

PLEA**GUILTY**, and the court being satisfied that there is a factual basis for the plea.**NOLO
CONTENDERE****NOT
GUILTY****FINDING**

There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:
Conspiracy to Possess with Intent to Distribute Methamphetamine in violation of 21 U.S.C. §846, 841(a)(1), 841(b)(1)(A) as charged in Count 1; Possession with Intent to Distribute Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) as charged in Counts 2 and 3; and, Maintaining a Drug Involved Premises in violation of 21 U.S.C. § 856(a)(1) as charged in Count 9 of the Indictment.

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Sergio Ramirez, is hereby committed on Counts 1, 2, 3, and 9 of the 9-Count Indictment to the custody of the Bureau of Prisons for a term of 148 months. This term consists of 179 months on each of Counts 1, 2, 3 and 9 of the Indictment, to be served concurrently. This term shall run concurrently to the undischarged term of imprisonment under San Bernardino County Superior Court, Case No. FSB804102. It is ordered that the defendant shall pay to the United States a special assessment of \$400, which is due immediately.

All fines are waived as it is found that the defendant does not have the ability to pay.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of five years. This term consists of five years on each of Counts 1, 2, and 3 and three years on Count 9 of the Indictment, all such terms to run concurrently under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the U. S. Probation Office and General Order 05-02;
2. The defendant shall not commit any violation of local, state or federal law or ordinance;
3. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer;
4. During the period of community supervision the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment;
5. The defendant shall comply with the immigration rules and regulations of the United States, and if deported from this country, either voluntarily or involuntarily, not reenter the United States illegally. The defendant is not required to report to the Probation Office while residing outside of the United States; however, within 72 hours of release from any custody or any reentry to the

USA vs. SERGIO RAMIREZ

Docket No.: CR 09-229 GAF-1

United States during the period of Court-ordered supervision, the defendant shall report for instructions to the United States Probation Office, located at the United States District Court, 290 N. D Street, Suit 700, San Bernardino, CA 92401;

6. The defendant shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification in any name, other than the defendant's true legal name; nor shall the defendant use, for any purpose or in any manner, any name other than his true legal name or names without the prior written approval of the Probation Officer; and
7. The defendant shall cooperate in the collection of a DNA sample from the defendant.

The Court recommends that the defendant be designated in a Bureau of Prison facility somewhere in Southern California.

Defendant informed of his right to appeal.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

July 12, 2010

Date


U. S. District Judge GARY ALLEN FEESS

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

July 12, 2010

Filed Date

By Renee A. Fisher

Deputy Clerk

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

USA vs. SERGIO RAMIREZDocket No.: CR 09-229 GAF-1

1. The defendant shall not commit another Federal, state or local crime;
2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5. the defendant shall support his or her dependents and meet other family responsibilities;
6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
10. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
11. 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 by the probation officer;
12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
13. the defendant shall not enter into any agreement to act as an informer or a 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 conform the defendant's compliance with such notification requirement;
15. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;
16. and, for felony cases only: not possess a firearm, destructive device, or any other dangerous weapon.



The defendant will also comply with the following special conditions pursuant to General Order 01-05 (set forth

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant shall pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution-pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence:
 - Private victims (individual and corporate),
 - Providers of compensation to private victims,
 - The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
5. Other penalties and costs.

USA vs. SERGIO RAMIREZDocket No.: CR 09-229 GAF-1**SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE**

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____
 Defendant noted on appeal on _____
 Defendant released on _____
 Mandate issued on _____
 Defendant's appeal determined on _____
 Defendant delivered on _____ to _____
 at _____
 the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____

 Date

 Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court.

By _____

USA vs. SERGIO RAMIREZ

Docket No.: CR 09-229 GAF-1

Filed Date

Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

Defendant

Date

U. S. Probation Officer/Designated Witness

Date

FIRST AMENDED

JS-3

**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. CR 09-229 GAF-1Defendant SERGIO RAMIREZSocial Security No. U N K akas: CARLON, Edgar Celis

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
07	12	2010

COUNSEL**WITH COUNSEL**William Domnarski Appointed

(Name of Counsel)

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CONTENDERE****NOT
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ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Sergio Ramirez, is hereby committed on Counts 1, 2, 3, and 9 of the 9-Count Indictment to the custody of the Bureau of Prisons for a term of 148 months. This term consists of ****148**** months on each of Counts 1, 2, 3 and 9 of the Indictment, to be served concurrently. This term shall run concurrently to the undischarged term of imprisonment under San Bernardino County Superior Court, Case No. FSB804102.

It is ordered that the defendant shall pay to the United States a special assessment of \$400, which is due immediately.

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Upon release from imprisonment, the defendant shall be placed on supervised release for a term of five years. This term consists of five years on each of Counts 1, 2, and 3 and three years on Count 9 of the Indictment, all such terms to run concurrently under the following terms and conditions:

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USA vs. SERGIO RAMIREZ

Docket No.: CR 09-229 GAF-1

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July 12, 2010

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Clerk, U.S. District Court

July 12, 2010

Filed Date

By Renee A. Fisher

Deputy Clerk

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USA vs. SERGIO RAMIREZDocket No.: CR 09-229 GAF-I

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Payments shall be applied in the following order:

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 - Private victims (individual and corporate),
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 - The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
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USA vs. SERGIO RAMIREZ

Docket No.: CR 09-229 GAF-I

SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE

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RETURN

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Defendant noted on appeal on _____
Defendant released on _____
Mandate issued on _____
Defendant's appeal determined on _____
Defendant delivered on _____ to _____
at _____

the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____
Deputy Marshal

Date _____

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____

USA vs. SERGIO RAMIREZ

Docket No.: CR 09-229 GAF-1

Filed Date

Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

Defendant

Date

U. S. Probation Officer/Designated Witness

Date

FILED

UNITED STATES COURT OF APPEALS

SEP 03 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

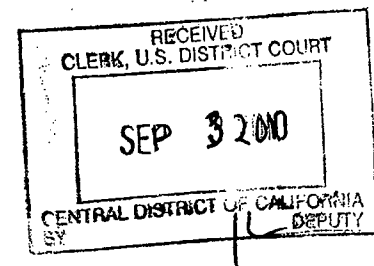
SERGIO RAMIREZ,

Defendant - Appellant.

No. 10-50345

D.C. No. 2:09-cr-00229-GAF
Central District of California,
Los Angeles

ORDER



Before: Peter L. Shaw, Appellate Commissioner.

The motion of appointed counsel William Domnarski, Esq., to be relieved as counsel of record and for the appointment of new counsel is granted. Counsel will be appointed by separate order.

The Clerk shall electronically serve this order on the appointing authority for the Central District of California, who will locate appointed counsel. The district court shall send notification of the name, address, and telephone number of appointed counsel to the Clerk of this court at counselappointments@ca9.uscourts.gov within 14 days of locating counsel.

New counsel shall designate the reporter's transcripts by October 15, 2010.

The transcript is due December 14, 2010. Appellant's opening brief and excerpts of record are due January 24, 2011; appellee's answering brief is due February 23, 2011; and the optional reply brief is due 14 days after service of the answering brief.

The Clerk shall serve this order on former counsel.

The Clerk shall also serve this order on appellant individually at Reg. No. 56249-112, Kern County Sheriff's Department-Jail, P.O. Box 2208, Bakersfield, California 93303-2208.

FILED

UNITED STATES COURT OF APPEALS

OCT 04 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SERGIO RAMIREZ, a.k.a. Edgar Carlon,

Defendant - Appellant.,

No. 10-50345

D.C. No. 2:09-cr-00229-GAF
Central District of California,
Los Angeles

ORDER

RECEIVED
CLERK, U.S. DISTRICT COURT

OCT - 4 2012

CENTRAL DISTRICT OF CALIFORNIA
BY *DLM* DEPUTY

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

Sergio Ramirez's motion to extend time to file a petition for rehearing is granted. Ramirez's pro se supplemental brief, received on May 18, 2012, is construed as a petition for panel rehearing and deemed filed. So construed, the petition is denied.

No further filings will be accepted in this closed case.

United States District Court
Central District of California
Western Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

SERGIO RAMIREZ,

Defendant.

CR 09-0229 TJH

Order

[499]

The Court has considered Defendant's motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 782 to the United States Sentencing Guidelines Manual § 2D1.1 (2014) ("USSG"), together with the moving papers.

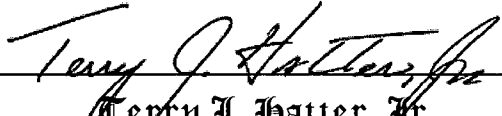
A reduction in sentence is not authorized under 18 U.S.C. § 3582(c)(2) if Amendment 782 does not have the effect of lowering Defendant's applicable guideline range. *See United States v. Davis*, 739 F.3d 1222, 1224-26 (9th Cir. 2014). Here, based on the total quantity of drugs in the counts of conviction and relevant conduct as found by the Court at sentencing, Amendment 782 did not change the applicable base offense level or guideline range. Thus, Amendment 782 does not have the effect of lowering Defendant's applicable guideline range. Therefore, Defendant is not entitled to a sentence reduction.

1 Because there is no statutory or constitutional right to counsel for a § 3582(c)
2 motion, and because Defendant's motion lacks merit, the Court declines to appoint
3 counsel. *See United States v. Richardson*, 569 Fed. Appx. 504, 504-05 (9th Cir. 2014).

4 Accordingly,

5 **It is Ordered** that Defendant's motion for sentence reduction be, and hereby
6 is, **Denied**.

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8 Date: January 30, 2017

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10 
11 **Terry J. Hatter, Jr.**
12 **Senior United States District Judge**

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CC: BOP, Clerk has mailed a copy to the defendant.