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NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted October 18, 2017*

Decided October 18, 2017

Before

JOEL M. FLAUM, *Circuit Judge*

KENNETH F. RIPPLE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

No. 16-2285

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ARCHIE BRADFELD,
Defendant-Appellant.

Appeal from the United States District
Court for the Central District of Illinois.

No. 1:08-CR-10091-001

Michael M. Mihm,
Judge.

ORDER

Archie Bradfield pleaded guilty to one count of conspiring to possess and distribute crack cocaine in 2009, *see* 21 U.S.C. §§ 846, 841(a)(1), and the district court sentenced him to 242 months' imprisonment. Five years later, the Sentencing Commission adopted Amendment 782, reducing the base-offense level for most drug offenses by two levels. *See* U.S.S.G. supp. to app. C, amend. 782 (2014); *id.*, amend. 788 (making Amendment 782 retroactive). In 2015 Bradfield moved to have his sentence

* We have agreed to decide the case without oral argument because the issues have been authoritatively decided. FED. R. APP. P. 34(a)(2)(B).

reduced under this amendment, *see* 18 U.S.C. § 3582(c)(2), and the district judge reduced his sentence to 235 months' imprisonment. This appeal concerns a later motion that Bradfield filed under the same amendment. Because the later motion is an improper successive attempt to get relief under the same amendment, we affirm.

Nine months after Bradfield received relief under his first motion, he filed his second § 3582(c)(2) motion, again asking the district court to reduce his sentence under Amendment 782. The judge denied the motion, reasoning that Bradfield was not entitled to a second reduction based on the same amendment. The judge also noted that Bradfield sought to relitigate the drug quantity attributed to him at sentencing, but we already had deemed that argument frivolous in a prior order. *See United States v. Bradfield*, 376 F. App'x 620, 622–24 (7th Cir. 2010). A month after the court's denial, Bradfield filed *another* motion where he yet *again* asked for a sentence reduction under § 3582 by invoking Amendment 782 and again challenged the amount of cocaine attributed to him at sentencing. The judge denied this motion, and Bradfield appeals that denial.

The judge's denial of the third motion, which is the only decision properly before us, was correct. A district court cannot grant a successive § 3582(c)(2) motion filed more than 14 days after the court has decided the first motion. *See* FED. R. APP. P. 4(b); *United States v. Beard*, 745 F.3d 288, 292 (7th Cir. 2014); *United States v. Redd*, 630 F.3d 649, 651 (7th Cir. 2011). Bradfield already benefited from a sentence reduction that Amendment 782 authorizes when the district judge granted his first motion in 2015. Therefore the judge did not err in denying Bradfield's third motion, filed the next year, under the same amendment. Moreover, even if this motion were Bradfield's first, the judge could not have granted the relief Bradfield sought in it. Bradfield was attempting to relitigate the drug weight used to calculate the guidelines range provided at sentencing. "[Section] 3582(c)(2) does not authorize a resentencing. Instead, it permits a sentence reduction within the narrow bounds" the Commission established. *Dillon v. United States*, 560 U.S. 817, 831 (2010).

We thus AFFIRM the district court's judgment.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

November 28, 2017

JOEL M. FLAUM, *Circuit Judge*

KENNETH F. RIPLEY, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

No. 16-2285

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ARCHIE BRADFIELD,
Defendant-Appellant.

Appeal from the United States District
Court for the Central District of Illinois.

No. 1:08-cr-10091-1

Michael M. Mihm,
Judge.

ORDER

On consideration of the petition for rehearing and petition for rehearing en banc filed by the defendant-appellant in the above case on November 9, 2017, no judge in active service has requested a vote thereon and all judges on the original panel have voted to deny the petition. The petition is therefore DENIED.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARCHIE BRADFELD,

Defendant.

Case No. 08-10091-1

ORDER

This matter is now before the Court on Archie Bradfield's ("Defendant") Motion to Reduce Sentence – USSC Amendment (ECF No. 82) and the Federal Public Defender's Motion to Withdraw (ECF No. 84). For reasons stated herein, the Motions are DENIED.

DISCUSSION

On March 9, 2015, this Court entered an agreed Order reducing Defendant's sentence pursuant to Amendment 782 to 235 months. (ECF No. 71). Thereafter, on December 18, 2015, Defendant filed another Motion pursuant to U.S.S.G. Amendment 782. (ECF No. 82). Out of an abundance of caution, the Court re-appointed the Federal Public Defender to represent Defendant on this Motion/Request for Reconsideration. (TEXT ONLY ORDER dated 12/22/2015). On March 30, 2016, the Federal Public Defender filed his Motion to Withdraw stating that there are no non-frivolous issues that the Defendant can raise seeking a further reduction of his sentence. This Court agrees and the Federal Public Defender's Motion to Withdraw is GRANTED.

Additionally, it is clear, based on Defendant's Motion, he is seeking to re-litigate the amount of cocaine base (crack) attributed to him at sentencing. (ECF No. 82). Those issues were addressed at sentencing (see ECF No. 56 at 33, wherein counsel for the Defendant explained "[n]o, Your Honor, we don't have any evidence to present that it was more than 1.5

grams or 1.5 kilograms. That it was less than 1.5 kilograms. I'm sorry.). This issue was also addressed on appeal. The Seventh Circuit explained:

Next, counsel and Bradfield both question whether it was proper for the district court to rely on Rice's testimony at sentencing to determine the quantity of crack involved in the conspiracy. Counsel does not explain on what basis Bradfield could challenge the reliability of Rice's testimony, but any such challenge would be futile because the district court's decision to credit Rice's testimony deserves great deference. *See United States v. Rodgers*, 245 F.3d 961, 968 (7th Cir.2001). At sentencing Bradfield did not cross-examine Rice about his description of the conspiracy or the accuracy of his account of the amount of crack involved. Rice's testimony corroborated the information reflected in Bradfield's presentence report, and the FBI agent confirmed that Rice's description of Bradfield's drug activities was consistent with the statements Rice made right after his arrest. Thus, there was sufficient indicia of reliability for the district court to consider Rice's testimony. *See U.S.S.G. § 6A1.3(a); United States v. Wilson*, 502 F.3d 718, 721-22 (7th Cir.2007).

United States v. Bradfield, 376 F. App'x 620, 623 (7th Cir. 2010). There is no reason for the Court to reconsider this issue nor is it appropriately raised in the Motion to Reduce filed by the Defendant. Accordingly, the Motion to Reduce Sentence – USSC Amendment (ECF No. 82) is DENIED.

CONCLUSION

For reasons stated herein, Archie Bradfield's Motion to Reduce Sentence – USSC Amendment (ECF No. 82) and the Federal Public Defender's Motion to Withdraw (ECF No. 84) are DENIED.

ENTERED this 6th day of April 2016.

/s/ Michael M. Mihm

Michael M. Mihm

U.S. District Court Judge

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS****UNITED STATES OF AMERICA,****Plaintiff,****v.****ARCHIE BRADFELD,****Defendant.****Case No. 08-10091-1****ORDER**

This matter is now before the Court on Archie Bradfield's ("Defendant") Motion to Alter or Amend (ECF No. 86) requesting that the Court allow him to oppose the granted Motion to Withdraw as Counsel and present non-frivolous arguments as to why he is entitled to a reduction in his sentence. For reasons stated herein, the Motion is DENIED.

On March 9, 2015, this Court entered an agreed Order reducing Defendant's sentence pursuant to Amendment 782 to 235 months. (ECF No. 71). Thereafter, on December 18, 2015, Defendant filed another Motion pursuant to U.S.S.G. Amendment 782. (ECF No. 82). Out of an abundance of caution, the Court re-appointed the Federal Public Defender to represent Defendant on this Motion/Request for Reconsideration. (TEXT ONLY ORDER dated 12/22/2015). In its Order dated April 6, 2016, this Court granted the Federal Public Defender's Motion to Withdraw finding that there were no issues that needed to be reviewed. In fact, it became clear to this Court that the Defendant sought to use his Motion as a way to re-litigate the amount of cocaine base (crack) attributed to him at sentencing. (ECF No. 85). This Court noted this issue has been fully resolved at trial and on appeal. *Id.* at 2.

Undeterred, Defendant now argues that the Court did not give him a chance to present his issues which he believes are not frivolous before denying his Motion to reduce his sentence.

Defendant does not assert in his Motion any of these non-frivolous arguments. However, Defendant makes it "clear that [he] is not arguing or is trying to reargue the same issues that has been argued during any point in prior litigation, proceedings, sentencing hearing, direct appeal, or his U.S.S.G. § 782 motion for reduction on the quantity of 3,024 grams of crack cocaine." (ECF No. 86 at 4). While that may be true, the purpose of this Court's re-appointment of counsel was based on Amendment 782. (See TEXT ONLY ORDER dated 12/22/2015). If Defendant believes he has other reasons for his sentenced to be reduced, he must file an appropriate Motion – which would generally be a Motion to Vacate, Set Aside or Correct Sentenced pursuant to § 2255 - and in Defendant's case, would require him to obtain permission from the Seventh Circuit Court of Appeals to file a second or successive Motion to Vacate, Set Aside or Correct Sentenced pursuant to § 2255. See *Bradfield v. United States*, ILCD Case No. 11-CV-1453 (J. Mihm Nov. 26, 2014) for first filed Motion to Vacate, Set Aside or Correct Sentenced pursuant to § 2255. Nonetheless, based on what has been presented to this Court to date, the Motion to Alter or Amend (ECF No. 86) is DENIED.

ENTERED this 11th day of May 2016.

/s/ Michael M. Mihm
Michael M. Mihm
U.S. District Court Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 08-10091-1
	)	
ARCHIE BRADFELD,	)	
	)	
Defendant.	)	

ORDER

This matter is before the Court on Defendant Archie Bradfield's Motion to Proceed *in forma pauperis* on Appeal (ECF No. 89). For reasons stated herein, the Motion is DENIED.

The procedural history of related to this issue was outlined in this Court's Order dated May 11, 2016. (ECF No. 87). In sum:

On March 9, 2015, this Court entered an agreed Order reducing Defendant's sentence pursuant to Amendment 782 to 235 months. (ECF No. 71). Thereafter, on December 18, 2015, Defendant filed another Motion pursuant to U.S.S.G. Amendment 782. (ECF No. 82). Out of an abundance of caution, the Court re-appointed the Federal Public Defender to represent Defendant on this Motion/Request for Reconsideration. (TEXT ONLY ORDER dated 12/22/2015). In its Order dated April 6, 2016, this Court granted the Federal Public Defender's Motion to Withdraw finding that there were no issues that needed to be reviewed. In fact, it became clear to this Court that the Defendant sought to use his Motion as a way to re-litigate the amount of cocaine base (crack) attributed to him at sentencing. (ECF No. 85). This Court noted this issue has been fully resolved at trial and on appeal. *Id.* at 2.

(ECF No. 87 at 1). Notably, the Seventh Circuit Court of Appeals has limited Defendant's appeal to the Court's Order dated May 11, 2016. (ECF No. 94). And Defendant now has requested permission to appeal *in forma pauperis*. (ECF No. 89)

The Federal Rules of Appellate Procedure provide that a pauper is permitted to proceed *in forma pauperis* unless the court "certifies that the appeal is not taken in good faith".

Fed.R.App.P. 24(a)(3). A finding of bad faith is essentially equivalent to a finding of frivolousness. *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000). Put another way, the Court must find "that a reasonable person could suppose that he appeal has some merit." *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

So it is clear, Defendant is arguing that, at sentencing, this Court miscalculated the drug quantity attributable to him. (ECF No. 86). Additionally, Defendant argues that the Court should have given him an opportunity to respond to counsel's motion to withdraw before ruling on the issue. *Id.* The Court finds an appeal of either issue fails to meet the good faith standard required to appeal *in forma pauperis*. After counsel filed his brief, it became clear that Defendant was seeking relief outside the scope that the Court had appointed counsel. There was no need for a response from the Defendant – as it became clear Defendant was seeking a review of an issue not appropriately brought in the matter presented to the Court. Defendant's appeal has no merit, and no reasonable litigant would pursue the action. Accordingly, the Motion to Proceed *in forma pauperis* on Appeal (ECF No. 89) is DENIED.

ENTERED this 22nd day of July 2016.

/s/ Michael M. Mihm
Michael M. Mihm
U.S. District Court Judge