

APPENDIX

Court of Appeals August 19, 2025 Opinion

01

District Court June 20, 2024 Decision

04

U.S.S.G. §4C1.1

07

Ex Post Facto Clause

09

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

AUG 19 2025

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CESAR CASTILLO-PENA,

Defendant - Appellant.

No. 24-4257

D.C. No.

2:20-cr-00590-RGK-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted August 15, 2025**
Pasadena, California

Before: NGUYEN, FORREST, and VANDYKE, Circuit Judges.

Cesar Castillo-Pena appeals the district court's denial of his motion for a sentence reduction under a retroactive amendment to the U.S. Sentencing Guidelines. *See* 18 U.S.C. § 3582(c)(2); U.S. Sent'g Guidelines Manual

* 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).

01

(“U.S.S.G.”) § 4C1.1(a) (U.S. Sent’g Comm’n 2021). Reviewing his preserved claim for abuse of discretion, *see United States v. Lizarraras-Chacon*, 14 F.4th 961, 964–65 (9th Cir. 2021), and his unpreserved claims for plain error, *see United States v. Depue*, 912 F.3d 1227, 1232 (9th Cir. 2019) (en banc), we affirm.

1. The district court did not plainly err by finding that Castillo-Pena failed to show that he “did not possess . . . a firearm . . . in connection with the offense.” U.S.S.G. § 4C1.1(a)(7). As part of the factual basis for his plea, Castillo-Pena agreed that he possessed the firearm “as part of the planned transaction.” Even if, as he argued to the district court, his possession was “consistent with self-defense,” his possession was still “in connection with” the drug exchange regardless of whether he possessed the gun for self-defense in other situations. *See United States v. Ferryman*, 444 F.3d 1183, 1186 (9th Cir. 2006).

2. The district court’s failure to address Castillo-Pena’s Second Amendment argument was harmless. Assuming that his conduct falls within the plain text of the Second Amendment, there is “a history and tradition of regulating the possession of firearms during the commission of felonies involving a risk of violence,” and “drug trafficking plainly poses substantial risks of confrontation that can lead to immediate violence.” *United States v. Alaniz*, 69 F.4th 1124, 1129–30 (9th Cir. 2023). The Guidelines’ increased sentencing exposure for possessing a

firearm in connection with a drug offense does not violate the Second Amendment.

See id.

3. U.S.S.G. § 4C1.1(a)(7) does not plainly violate the Ex Post Facto Clause.

A retrospective decrease in the Guidelines range “poses no Ex Post Facto concerns,” *United States v. Bautista*, 989 F.3d 698, 703 (9th Cir. 2021), because there is “no constitutional requirement of retroactivity that entitles defendants sentenced to a term of imprisonment to the benefit of subsequent Guidelines amendments,” *Dillon v. United States*, 560 U.S. 817, 828 (2010).

AFFIRMED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No.	2:20-cr-00590-RGK	Date	June 20, 2024
Title	USA v. Cesar Castillo-Pena		

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Joseph Remigio <i>Deputy Clerk</i>	Not Reported <i>Court Reporter / Recorder</i>	James A. Santiago <i>Assistant U.S. Attorneys</i>
---------------------------------------	--	--

U.S.A. v. Castillo-Pena	Present	Cust	Bond	Attorneys for Defendants:	Present	App	Rel
	N	X		Pro Se			

Proceedings: (IN CHAMBERS) Order Re: Motion to Modify Sentence (DE 49)

I. INTRODUCTION

On November 8, 2021, Cesar Castillo-Pena ("Defendant") was charged in a six-count indictment, including a count for Possession of a Firearm in Furtherance of Drug Trafficking Crimes.

On March 22, 2024, Cesar Castillo-Pena ("Defendant") filed a Motion to Modify Sentence under 18 U.S.C. § 3582(c)(2), seeking a two-point reduction in his sentence under Amendment 821 § 4C1.1 of the Sentencing Guidelines ("§ 4C1.1"). For the following reasons the Court DENIES Defendant's Motion.

II. FACTUAL BACKGROUND

In 2020, Defendant participated in four transactions selling methamphetamine. During Defendant's last transaction, law enforcement seized from Defendant's car the suspected methamphetamine, in addition to a loaded firearm, and arrested Defendant.

Defendant was charged in a six-count indictment, and pled guilty to Count 5: Distribution of Methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii). The base offense level for this crime was 38. Because Defendant possessed a firearm during the commission of the crime, there was a two-level enhancement. Defendant then received a three-level reduction for his acceptance of responsibility. Defendant's total offense level was 37, with Criminal History Category I due to no prior criminal history. The advisory guideline range was 210 to 262 months.

041

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No.	2:20-cr-00590-RGK	Date	June 20, 2024
Title	USA v. Cesar Castillo-Pena		

On November 8, 2021, the Court sentenced Defendant to 180 months in prison, and 5 years of supervised release. Defendant is currently serving his sentence at Sandstone FCI, with a minimum release date of October 14, 2033. He has served approximately 29 months.

III. JUDICIAL STANDARD

18 U.S.C. § 3582(c)(2) “provides for the modification of a term of imprisonment by giving courts the power to reduce an otherwise final sentence in circumstances specified by the Commission.” *United States v. Brito*, 868 F.3d 875, 879 (9th Cir. 2017). Under § 3582(c)(2), district courts are required to make a two-step inquiry. *Dillon v. United States*, 560 U.S. 817, 826 (2010). First, a court must determine that defendant is eligible for a sentence reduction under § 3582(c)(2) and a reduction is consistent with § 1B1.10 of the Sentencing Guidelines. *See id.* Second, if the defendant is eligible, a court must consider the applicable factors under §3553(a) to determine whether it is in the courts discretion to authorize a reduction. *Id.*

IV. DISCUSSION

Upon motion of the defendant, a court may reduce a defendant’s term of imprisonment if the sentencing range which imprisonment was based on has been subsequently lowered by the Sentencing Commission under 28 U.S.C. 994(o). 18 U.S.C. § 3582(c)(2). Section 1B1.10 explains that under certain situations, a defendant can seek a sentence reduction based on retroactive application of amendments to the Sentencing Guidelines, including those contained in § 4C1.1. *See U.S. Sent’g Guidelines Manual § 1B1.10(d)* (U.S. Sent’g Comm’n 2023). Offenders with zero criminal history points who meet all ten requirements under § 4C1.1, including a requirement that “defendant did not possess . . . [or] transport . . . a firearm or other dangerous weapon in connection with the offense,” are allowed a two-offense-level reduction. *See U.S. Sent’g Guidelines Manual § 4C1.1(a)(7)* (U.S. Sent’g Comm’n 2023).

Under § 4C1.1(a)(7), a defendant is found to possess a firearm “in connection with” a drug offense when the circumstances indicate that the firearm was possessed to protect the defendant from the dangers of their work, and defendant lacked a plausible alternative explanation for possessing the firearm. *See United States v. Ferryman*, 444 F.3d 1183, 1186 (9th Cir. 2006).

Here, Defendant kept a loaded firearm in his car while participating in a planned distribution of methamphetamine. Defendant has not provided an alternative explanation for possessing the firearm. Under the circumstances, Defendant’s possession of the firearm was likely “in connection” with his

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. 2:20-cr-00590-RGK

Date June 20, 2024

Title *USA v. Cesar Castillo-Pena*

offense of Distribution of Methamphetamine. Therefore, Defendant is barred from receiving a sentence reduction under § 4C1.1(a)(7).

V. CONCLUSION

For the foregoing reason, the Court **DENIES** Defendant's Motion to Modify Sentence.

IT IS SO ORDERED.

Initials of Preparer

JRE/vc

§4C1.1. Adjustment for Certain Zero-Point Offenders

(a) ADJUSTMENT.—If the defendant meets all of the following criteria:

- (1) the defendant did not receive any criminal history points from Chapter Four, Part A;
- (2) the defendant did not receive an adjustment under §3A1.4 (Terrorism);
- (3) the defendant did not use violence or credible threats of violence in connection with the offense;
- (4) the offense did not result in death or serious bodily injury;
- (5) the instant offense of conviction is not a sex offense;
- (6) the defendant did not personally cause substantial financial hardship;
- (7) the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (8) the instant offense of conviction is not covered by §2H1.1 (Offenses Involving Individual Rights);
- (9) the defendant did not receive an adjustment under §3A1.1 (Hate Crime Motivation or Vulnerable Victim) or §3A1.5 (Serious Human Rights Offense);
- (10) the defendant did not receive an adjustment under §3B1.1 (Aggravating Role); and
- (11) the defendant was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848;

decrease the offense level determined under Chapters Two and Three by 2 levels.

(b) DEFINITIONS AND ADDITIONAL CONSIDERATIONS.—

- (1) "**Dangerous weapon**," "**firearm**," "**offense**," and "**serious bodily injury**" have the meaning given those terms in the Commentary to §1B1.1 (Application Instructions).
- (2) "**Sex offense**" means (A) an offense under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of title 18, not including a recordkeeping offense; (iii) chapter 117 of title 18, not including transmitting information about a minor or filing a factual statement about an alien individual; or (iv) 18 U.S.C. § 1591; or (B)

ucsent

1

© 2025 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

07
20953041

01/05/2026

an attempt or a conspiracy to commit any offense described in subparagraphs (A)(i) through (iv) of this definition.

- (3) In determining whether the defendant's acts or omissions resulted in "**substantial financial hardship**" to a victim, the court shall consider, among other things, the non-exhaustive list of factors provided in Application Note 4(F) of the Commentary to §2B1.1 (Theft, Property Destruction, and Fraud).

08