Motion for Reduction of Sentence 18 U.S.C. 3582(c)(2) Pursuant to Retroactive Amendment 821

US
v
Amber Bruey

case #: 2:21-cr-74-TPB-KCD

Judge: Thomas Barber

Comes now petitioner, Amber Bruey, in a pro se motion respectfully requesting the Court to grant a reduction in sentence pursuant to Amendment 821, part a becoming retroactive.

Petitioner requests a reduction of her sentence to a term of 36-42 months incarceration as a result of a reduced sentencing guidelines range, application of the same downward variance of 15 months, and consideration of her post-conviction rehabilitation. Petitioner also asks the Court to recommend a period of 9-12 months RRC placement in home confinement or FLM (Federal Location Monitoring) to the BOP.

On 11/1/2023, the Sentencing Commission enacted Amendment 821, under 3B1.1(a) which comprised two parts: part a applied to offenders with status points, and part B applied to 0 point offenders relating to criminal history. The commission approved the Amendment to be retroactive effective 2/1/24. As a result, Petitioner seeks relief under Amendment 821, part A. The change eliminated "status points" for offenders who received these added points for being on probation at the time their instant offense was committed and if they had 1 or less criminal history points.

Petitioner was assessed 4 criminal history points (which included 2 "status points") As a result, petitioner meets the qualification to seek relief under this change in law.

Petitioner was sentenced on 7/13/22 on multiple counts of wire fraud and illegal monetary transactions related to the Paycheck Protection Program (PPP) and EIDL loan programs. The pre-sentence report was prepared by probation, and petitioner was assigned 2 criminal history points for prior non-adjudicated charges and then had 2 "status points" added for being under probation/ supervision. This resulted in a total of 4 criminal history points and a resulting criminal history category of 3. As a result of Amendment 821, part A, status points are eliminated if offender had 6 or less criminal history points. Petitioner had 4 so "status points" are eliminated, reducing petitioner's criminal history points from 4 to 2. This results in a revised criminal history category. Petitioner's criminal history category changes from 3 to criminal history category 2. Petitioner's offense level is 24. As a result of the new criminal history category, the sentencing guidelines are changed as well. In petitioner's case, her original criminal history category was 3 and offense level of 24 which resulted in a guidelines range of 63-78 months incarceration. The revised criminal history category 2 and Offense level 24 results in a revised guidelines range of 57-71 months. Petitioner was granted a downward variance at sentencing for 3553a factors of 15 months and was sentenced to 48 months incarceration to be followed by 3 years supervised release. Petitioner humbly and respectfully prays the court will apply the same

variance to the new guidelines range.

As stated, petitioner was granted a variance of 15 months at sentencing from the low end of the guidelines range. (163 months - 15 month variance = 48 month sentence). With the new guidelines range, the low end is now 57 months. Petitioner respectfully requests the same variance be applied on the new guidelines range which would reduce the sentence to 42 months (57 months - 15 month variance = 42 month sentence).

Granting this variance on the new guideline range does not pose a disparity in sentencing and has been granted by other courts such as in the case US v. Christina Johnson, case #: 2:20-cr-000-17-JPH-CMM-4 (defendant received a downward departure at sentencing and the court applied the same variance on the revised guideline range). See also US v. NiKKi Mitchum, case # 4:22-cr-00047-001 (D. Va) (sentencing guidelines were 51-63, court sentenced her to 51 months, amendment 821 filed, new range should be 41-51 months, after providing programming certificates, court varied downward even further below the amended guideline range and new sentence is 33 months for same PPP offenses as defendant, but greater loss amount). As a result of Peppers, it is not uncommon for courts to consider post-conviction rehab for Reductions. Petitioner also humbly asks the court to consider post-conviction rehabilitation (see Peppers v US) and reduce sentence further if the court sees fit which is within its discretion to do.

This court has the authority to resentence the petitioner under 18 U.S.C 3582(c)(2) regarding amendment 821, part a and considering post-conviction rehabilitation. The petitioner's behavior

while in BOP custody is an important indicator of whether she remains a danger to her community. Pursuant to 18 U.S.C. Sec 3142(G)(2019), See also 18 U.S.C 3582(c)(1)(A)(ii). Courts place significant weight on a defendant's post-sentencing conduct because it "poses the most up-to-date picture of her history and characteristics."

The First Step Act does not prohibit the District Courts from considering evidence of rehabilitation, or unrelated guideline changes. Under the First Step Act, courts will review the resentencing of a defendant under the auspices of the law in effect as of that day, "not the date of her offense or date of her conviction". Id at 2396 (citing Pepper v. US) 562, US. 476, 492, 131 S. Ct. (2011). While U.S.S.G. 1B1.10(b)(2) implies a reduction further below the amended guideline range would generally not be appropriate; there is nothing prohibiting the court from doing so and therefore this court is free to use its discretion when reviewing this reduction motion and all mitigating factors warranting a reduction.

Petitioner self-surrendered to FPC Alderson on 5/12/23 and is currently serving her sentence there. In determining 3553(a) factors, defendant's post-sentencing conduct supports a reduced sentence. The petitioner's offense did not involve violence, nor does she have a violent criminal history. Petitioner has completed various courses and programs, receiving 38 certificates to date, and still enrolled and nearing completion of 7 additional classes including non-residential drug program (completion date: 6/25/24) and HVAC vocational program (completion date: 6/27/24) plus she holds a job as a teacher's aide. With all of this, she is

gaining valuable skills that will be used upon her release from prison. The petitioner's successful completion of prison education programs makes her less likely to recidivate after release. Petitioner has attached computed course certificates and reference letters. While the petitioner does not seek recognition for computing programs and classes that she is expected and supposed to complete, she does want to raise the argument of a study from RAND CORP, See Lois M. Davis et. al, Evaluating the Effectiveness of Correctional Education to Incarcerated Adults, (2021). This study found that "on average, inmates who participated in correctional programs had 43% lower odds of recidivating than inmates who did not." As another court recently opined, this model behavior, "demonstrates a respect for the law and indicates how the defendant may perform on supervised release." United States v. Sweet, No 07-20369, 2021 US Dist. Lexis 69177, 2021 WL 1430836, at *3 (E.D. Mich April 15, 2021).

Granting petitioner this modest sentence reduction as a result of Amendment 821 and considering her post-conviction rehabilitation of 20 months on pre-trial incident free and "role model" behavior and programming during her incarceration, would not pose a threat to the community. Petitioner is non-violent and poses no threat to her community and will in fact be a great asset to her community upon her release. It also does not diminish the seriousness of her crime. Petitioner additionally seeks the courts' recommendation to BOP for 9-12 months RRC placement in home confinement or FLM (Federal location monitoring) under 3624c (1) and (2) in order to assist with her re-entry needs and provide valuable support and resources to ensure her success. Petitioner has served 46.5% of her FSA conditional release on 48 months, and 32.8% of her statutory GCT on 48 month sentence.

A sentence reduction to a term 36-42 months incarceration (or less if deemed approp.) to include a recommendation of 9-12 months RRC placement in home confinement or FLM under 3624(c)(1) and (2) (Known as Second Chance act) to be followed by 3 years Supervised release is sufficient, but not greater than necessary to meet the goals of sentencing, deter future criminal conduct, uphold respect for the law, and will not result in sentencing disparities.

For all of the foregoing reasons, petitioner humbly and respectfully requests a resentencing (sentence reduction) pursuant to 18 U.S.C. 3582(c)(2) under amendment 821, part a, and a recommendation to the BOP for 9-12 months RRC placement in home confinement or FLM pursuant to 3624(c)(1) and (2). While ultimately left to the discretion of the BOP, RRC placement must be:

(A) Conducted in a manner consistent with 3621(b)
(B) Determined on an individual basis
(C) Of sufficient duration to provide greatest likelihood of successful reintegration into the community.
18 U.S.C. 3624(b) + (c)

Among the 3621(b) factors to be considered by the BOP are:

(4) Any statement by the court that imposed the sentence

An RRC is a "penal or correctional facility" within the meaning of the statute. 3621(b) and BOP program Statement 7310.04. Therefore, a recommendation regarding the length of an RRC placement is appropriate and should be afforded in as much as rehabilitation is related to the purpose of the court's sentence. While the ultimate placement decision does lie with the BOP, the BOP is required by statute to consider any judicial recommendation and the court is free to

(7)

make such recommendation at "any time" United States v. Caballos, 671 F. 3d. 852, 856, (9th Cir 2011); Martin v. United States, 2008 WL 4546433 at *1-2 (W.D. Penn 2008); Locaboni v. United States, 251 F. Supp. 2d 1015, 1017 (D. Mass. 2003).

See Concepcion v. US, "Judges authorized by the First Step Act to reduce prison sentences or even to release movants immediately." (142 S. Ct. 2395).

Respectfully Submitted,

Amb B

Amber Bruce

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Please send all responses via mail to petitioner at above address. so she receives them.

STATE OF WEST VIRGINIA
COUNTY OF GREENBRIER
The foregoing instrument was acknowledged before me on this 18 day of June, 20 24, by C Wood

C Wood
Notary Public's Signature — Notary's Printed Name

My Commission Expiration: May 17, 2026

CASSANDRA WOOD
Notary Public Official Seal
State of West Virginia
My Comm. Expires May 17, 2026
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