

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

United States of America

v.

Carlos Smith

No. 20 CR 922

Judge Manish S. Shah

**Motion for Reduced Sentence under 18 U.S.C. § 3582(c)(2)
and United States Sentencing Guideline Amendment 821**

Defendant **Carlos Smith**, by the Federal Defender Program and its attorney, Erin K. DeGrand, moves this Court, pursuant to 18 U.S.C. § 3582(c)(2); § 1B1.10 of the U.S. Sentencing Guidelines; and Guidelines Amendment 821 Part A (Status Points), for an order reducing his term of imprisonment from 48 months to 43 months, leaving all other aspects of the original judgment in place. The government agrees that Mr. Smith qualifies for relief under Amendment 821; the only issue in dispute is whether a reduction is appropriate under § 3553(a). Because of the hardships placed on Mr. Smith's family by his time in custody, Mr. Smith's exemplary record in prison, and the need to avoid unwarranted sentencing disparities, the Court should grant Mr. Smith's request for a reduction under Amendment 821.

I. Background

On February 23, 2023, this Court sentenced Mr. Smith to a 48-month term of imprisonment for wire fraud and money laundering. Dkt. 57. Per the Bureau of Prisons website, Mr. Smith's projected release date is August 2, 2026.

II. Relevant Guideline Amendment

Title 18 U.S.C. § 3582(c)(2) grants this Court jurisdiction to reduce the term of a previously imposed sentence of incarceration for certain qualifying defendants:

In the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the defendant,...the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent they are applicable, if such a reduction is consistent with applicable policy statement issued by the Sentencing Commission.

18 U.S.C § 3582(c)(2).

On April 27, 2023, the U.S. Sentencing Commission approved modifications to the criminal history calculation which may result in lowering the applicable guideline ranges for offenders. *See* U.S.S.G. App'x C, Amdt. 821. After further study, on August 24, 2023, the Commission determined that two parts of Amendment 821 shall apply retroactively: Part A ("Status Points under § 4A1.1") and Part B, Subpart 1 ("Zero-Point Offenders"). *See* U.S.S.G. App'x C, Amdt. 825. The Commission further directed that a court granting relief may not order the release of a defendant to occur any earlier than February 1, 2024. *Id.*

In Part A to Amendment 821, the Sentencing Commission changed the calculation of criminal history points added for an individual under a criminal justice sentence at the time of his or her offense (hereinafter "status points"). The Commission created the new Guidelines § 4A1.1(e), which eliminates the application of any status points for individuals with less than seven criminal history points counted under § 4A1.1(a)-(d), and provides for only one additional criminal history point for individuals who receive seven or more points under those same sections. *See* U.S.S.G. § 4A1.1(e).

The Sentencing Commission changed the application of status points after a comprehensive analysis of sentencing data. Based that analysis, it concluded that the pre-2023 Sentencing Guidelines overestimated the ability of status points to predict future recidivism. A June 2022 report from the Commission concluded that the pre-2023 applications of status points only

minimally improved the overall recidivism predictivity, increasing it by just 0.2 percent.¹ In other words, despite the significant sentencing impacts that pre-2023 status points had on criminal history, they only improved the criminal history score's successful prediction of rearrest for 15 out of every 10,000 offenders. This conclusion is consistent with the Commission's prior research on the topic.²

In addition to a lack of additional predictive value, the Commission identified several other concerns that caused it to reconsider the scope and impact of status points:

- other provisions of the Guidelines “separately account[] for consecutive punishment imposed upon revocations of supervised release, a likely occurrence if an offender was under a criminal justice sentence during the commission of another offense;”
- the possibility “that an offender’s criminal history score would be independently increased as the result of additional time imposed as the result of a revocation of probation or supervised release for the offense that also results in the addition of status points;” and
- the ability “to reflect and serve multiple purposes of sentencing, including the offender’s perceived lack of respect for the law, as reflected both in the offender’s overall criminal history and the fact that the offender has reoffended while under a criminal justice sentence” by keeping some version of status points for offenders in higher criminal history categories.

U.S.S.G. App’x C, Amdt. 821 at 241. Ultimately the Commission utilized its expertise to conclude that accounting for status in a more targeted manner “builds upon its tradition of data-driven evolution of the guidelines” and “continues to serve the broader purposes of sentencing.” The Commission subsequently made Part A of Amendment 821 retroactive because “the policy

¹ U.S. Sent’g Comm’n, “Revisiting Status Points” at 17 (June 2022). *Available at* www.ussc.gov.

² See U.S. Sent’g Comm’n, “A Comparison of the Federal Sentencing Guidelines Criminal History Category and the U.S. Parole Commission Salient Factor Score” (2005). *Available at* www.ussc.gov.

reasons underlying prospective application of the amendment apply with equal force to individuals who are already sentenced.” U.S.S.G. App’x C, Amdt. 825.

III. Application to Mr. Smith

A. Mr. Smith is Eligible for a Reduction under Amendment 821.

The Guidelines direct that a court considering whether and to what extent to reduce a defendant’s term of imprisonment, “shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines...had been in effect at the time the defendant was sentenced.” U.S.S.G. § 1B1.10(b)(1).

At Mr. Smith’s sentencing hearing, the Court assigned him three criminal history points under § 4A1.1(a)-(d) and two status points, for a total of five criminal history points. Dkt. 58 ¶¶ 49–51 (Corrected PSR); Dkt. 60 (SOR). This placed Mr. Smith in Criminal History Category III. *Id.* Combined with his final adjusted offense level of 17, the Court determined Mr. Smith’s guideline range was 30-37 months. The Court imposed a sentence of 48 months, about 30 percent above the top of the applicable guideline range.

Because Mr. Smith only received three criminal history points under §4A1.1(a)-(d), application of the amendment results in him receiving zero status points. His new total of three criminal history points places him in Criminal History Category II, resulting in a reduced guideline range of 27-33 months’ imprisonment. Therefore, Mr. Smith is eligible for a reduction in sentence. Counsel consulted with the government regarding this request, and AUSA Heidi Manschreck reports that the government agrees that Mr. Smith qualifies for relief, but opposes a reduction in light of the § 3553(a) factors in Mr. Smith’s case.

B. The Court Should Exercise Its Discretion to Grant Mr. Smith a Reduction.

Having determined that Mr. Smith is eligible for relief, the only question remaining is whether the Court should exercise its discretion to grant Mr. Smith's request for a reduction. In determining whether Mr. Smith should receive a reduction, the Court must consider the applicable factors under 18 U.S.C. § 3553(a). 18 U.S.C. § 3582(c)(2). In considering the history and characteristics of the defendant, the Court may consider post-sentencing conduct of the defendant that occurred after imposition of the term of imprisonment. U.S.S.G. § 1B1.10, comment. (n.1(B)(iii)).

Mr. Smith's post-sentencing conduct supports a reduction. During his time in custody, Mr. Smith has enrolled in multiple programs. He completed three programs: Money Smart, Money Smart for Older Adults, and National Parenting Program, Phases I and II. *See* Ex. A, BOP Certificates. He is about halfway through an educational course on Diesel Mechanics, and he has successfully completed 360 hours of Introduction to Heavy Duty Diesel Truck Technology at Ivy Tech Community College. *See id.*; Ex. B, Inmate Education Data - Transcript. He has also placed himself on the waitlist for courses in Occupational Education and Anger Management. *See* Ex. C, Inmate History – Other. In addition, he has not had any disciplinary issues while in custody. *See* Ex. D, Inmate Discipline Data.

Mr. Smith's sentence has placed strain on his family. His absence has created financial difficulties, because the family relied on his VA pension as a source of income and those payments have been paused while he serves his sentence.³ Mr. Smith's fiancée reports that

³ *See Incarcerated Veterans*, U.S. Department of Veterans Affairs, <https://www.benefits.va.gov/persona/veteran-incarcerated.asp#:~:text=Veterans%20in%20receipt%20of%20VA,Veteran%20meets%20VA%20eligibility%20requirements>. (last accessed Mar. 20, 2024).

paying the bills has been difficult since Mr. Smith went into custody. Her 21-year-old daughter, whom Mr. Smith helped to raise, would like to attend college but has been unable to do so because the family needs her paycheck to help cover the bills.

And the difficulties imposed by Mr. Smith's absence are not merely financial: his family needs his caretaking skills. Mr. Smith's 75-year-old mother suffers from kidney and liver disease, and she undergoes dialysis. Dkt. 58 ¶ 60. Mr. Smith was her caregiver before he went into custody. *Id.* Since Mr. Smith went into custody, his sister has been helping their mother, but Mr. Smith's sister is working and also suffers from her own health issues. Mr. Smith's fiancée reports that recently, Mr. Smith's mother has been in and out of the hospital. She has struggled to eat and is weak.

Mr. Smith is nearing 60. Upon his release, Mr. Smith's priority is caring for his mother. He plans to live with her so that he can return to his role as her caregiver. He also looks forward to reuniting with his fiancée, whom he plans to marry once the case is behind him. In terms of employment, he plans to be semi-retired. His fiancée's other daughter runs a trucking business, and he hopes to help her with the business, which is the reason he enrolled in the Diesel Mechanics course while in custody.

Moreover, the fact that Mr. Smith received an above-guideline sentence should not be a barrier to a reduction here. Mr. Smith does not ask the Court to reduce the above-guideline portion of his sentence; he merely asks that the Court adjust his sentence so that it is properly anchored to the correct guideline calculation. If the Court, consistent with its sentence at the original sentencing hearing, imposes a sentence about 30 percent above the new advisory guideline range, that will result in a sentence of about 43 months, or a reduction of five months. According to the BOP website, Mr. Smith's current release date is August 2, 2026. Based on this

current release date, which accounts for good time credits, a reduction of five months would result in a new release date in or around March 2026.

Such a reduction would appropriately avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct, while still reflecting the Court's decision to adjust his sentence upward. Other similarly situated defendants who have already been sentenced are eligible for similar reductions, and defendants moving forward will approach their sentencings with lower guideline ranges than Mr. Smith did. Although he has not been in custody long, Mr. Smith has been a model inmate for that time, and he has pressing family needs awaiting him upon the completion of his sentence. The § 3553(a) factors present here, as well as Mr. Smith's post-sentence conduct, favor a sentence reduction.

IV. Conclusion

Wherefore, for the foregoing reasons, Carlos Smith respectfully requests this Court reduce his term of imprisonment from 48 months to 43 months.⁴ All other aspects of the original sentence should remain unchanged.

Respectfully submitted,

Federal Defender Program
John F. Murphy,
Executive Director

By: s/ Erin K. DeGrand
Erin K. DeGrand
Attorney for Defendant

⁴ Should the Court grant Mr. Smith's motion, Counsel sent a completed Form AO247 to the Court's proposed order box for the Court's convenience.

CERTIFICATE OF SERVICE

The undersigned, Erin K. DeGrand, an attorney with the Federal Defender Program hereby certifies that in accordance with FED.R.CRIM. P. 49, FED. R. CIV. P5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following document(s):

MOTION FOR REDUCED SENTENCE UNDER 18 U.S.C. § 3582(C)(2)
AND UNITED STATES SENTENCING GUIDELINE AMENDMENT 821

was served pursuant to the district court's ECF system as to ECF filings, if any, and were sent by first-class mail/hand delivery on May 7, 2024 to counsel/parties that are non-ECF filers.

By: /s/ Erin K. DeGrand
ERIN K. DEGRAND
FEDERAL DEFENDER PROGRAM
55 E. Monroe St., Suite 2800
Chicago, Illinois 60603
(312) 621-2026

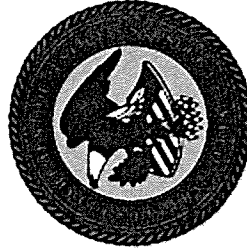
Exhibit A

Certificate of Completion

is awarded to

Carlos Smith

upon completing all requirements of the
National Parenting Program, Phases I and II
at Federal Correctional Complex Terre Haute, IN.



J. Walters

J. Walters, Special Population Program Coordinator

4.23.24

Date



IVY TECH COMMUNITY COLLEGE

Awards This Certificate To

CARLOS SMITH

Who has successfully completed 360 hours of

**INTRODUCTION TO HEAVY DUTY
DIESEL TRUCK TECHNOLOGY**

David Will, Executive Director
Ivy Tech Community College

MARCH 30, 2024

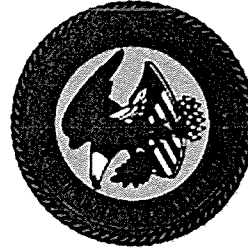
Doug Sanders, Instructor
Ivy Tech Community College

Certificate of Completion

is awarded to

Carlos Smith

upon completing all requirements of
Money Smart for Older Adults
at Federal Correctional Complex Terre Haute, IN.



J. Walters

J. Walters, Special Population Program Coordinator

10-31-23

Date

FCC TERRE HAUTE

THIS CERTIFICATE IS AWARDED TO

CARLOS SMITH

Completed First Step Act

MONEY SMART

USP TERRE HAUTE

FINANCIAL MANAGEMENT DEPARTMENT

B. HEATHERLY

Staff Signature

12/20/2023

Date

Exhibit B

THAAD	*	INMATE EDUCATION DATA	*	04-02-2024
PAGE 001 OF 001	*	TRANSCRIPT	*	14:54:46

REGISTER NO: 47891-424	NAME...: SMITH	FUNC: PRT
FORMAT.....: TRANSCRIPT	RSP OF: THA-TERRE HAUTE FCI	

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----- EDUCATION INFORMATION -----
FACL ASSIGNMENT DESCRIPTION          START DATE/TIME STOP DATE/TIME
THA  ESL HAS      ENGLISH PROFICIENT    02-17-2017 0652 CURRENT
THA  GED HAS      COMPLETED GED OR HS DIPLOMA 02-17-2017 0651 CURRENT

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----- EDUCATION COURSES -----
SUB-FACL  DESCRIPTION          START DATE  STOP DATE  EVNT  AC  LV  HRS
THA SCP   DIESEL MECHANICS      09-25-2023  CURRENT
MRG       VETERAN'S RE-ENTRY PROGRAM 04-27-2018 12-17-2019  P  C  P    80
MRG       TOUCHTYPING- MR. SPAHR    10-04-2019 11-04-2019  P  C  P    30
MRG       COMPUTER 1AM 7:30-10:30 SPAHR 06-16-2019 11-04-2019  P  C  M   189
MRG       RPP6 - CONTENDING WITH CULTURE 10-06-2019 10-06-2019  P  C  P     1
MRG       RPP5 - RELEASE REQ/PROCEDURES 10-06-2019 10-06-2019  P  C  P     1
MRG       RPP4- LIV COM            10-06-2019 10-06-2019  P  C  P     1
MRG       RPP3 - PERSONAL FINANCE    10-06-2019 10-06-2019  P  C  P     1
MRG       RPP2- EMPLOYMENT          10-06-2019 10-06-2019  P  C  P     1
MRG       RPP1 - INFDS AID           10-06-2019 10-06-2019  P  C  P     1
MRG       VETERANS - GROUP COUNSELING 07-23-2019 07-23-2019  P  C  P     1
MRG       INFORMATIONAL HEALTH FAIR   04-25-2019 04-25-2019  P  C  P     1
MRG DRUG  RE-ENTRY WORKSHOP          04-11-2019 04-11-2019  P  C  P     1
MRG DRUG  ACE: TUTOR TRAINING        11-29-2018 02-07-2019  P  C  P     8
MRG DRUG  RECREATION AFTER PRISON CLASS 10-22-2018 12-27-2018  P  C  P    10
MRG DRUG  BASIC REAL ESTATE ACE CLASS 10-13-2018 01-07-2019  P  C  P    20
MRG DRUG  INMATE TRANSITION FAIR      09-12-2018 09-12-2018  P  C  P     3
MRG DRUG  INFORMATIONAL HEALTH FAIR   04-19-2018 04-19-2018  P  C  P     1
MRG DRUG  RPP1 - AIDS/DISEASE PREVENT    04-24-2018 04-24-2018  P  C  P     1
ELK       AFRICAN AM HISTORY, FCI, SUN 06-11-2017 04-12-2018  P  C  P    16
ELK       NFPT NUTRITION             11-01-2017 01-02-2018  P  C  P    16
ELK       NUTRITIIONAL EDUCATION      09-06-2017 11-01-2017  P  C  P    16
ELK       WALKING 1                   06-27-2017 09-29-2017  P  C  P     2
ELK       AIDS AWARENESS-RPP<HN>      03-02-2017 03-02-2017  P  C  P     1

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G0000 TRANSACTION SUCCESSFULLY COMPLETED

Exhibit C

THAVU 531.01 * INMATE HISTORY * 11-14-2023
 PAGE 001 OF 001 * PT OTHER * 14:07:45

REG NO.: 47891-424 NAME.....: SMITH, CARLOS

CATEGORY: PTO FUNCTION: DIS FORMAT:

FCL	ASSIGNMENT DESCRIPTION	START DATE/TIME	STOP DATE/TIME
THA	ANG M WAIT ANGER MANAGEMENT CBT WAIT	08-23-2023 1216	CURRENT
THA	MON SM G P MONEY SMART GENERAL POP PART	10-25-2023 1502	CURRENT
THA	OCP EDU W OCCUPATIONAL EDUC WAITLIST	09-27-2023 0932	CURRENT
THA	MON SM O C MONEY SMART OLDER POP COMP	10-31-2023 1501	10-31-2023 1501
THA	MON SM O P MONEY SMART OLDER POP PART	10-19-2023 1230	10-31-2023 1501
THA	MON SM G W MONEY SMART GENERAL POP WAIT	08-02-2023 1720	10-25-2023 1501
THA	MON SM O W MONEY SMART OLDER POP WAIT	09-22-2023 1217	10-19-2023 1230

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

Exhibit D

12/19/23, 2:38 PM

PD15

THAAD * INMATE DISCIPLINE DATA * 12-19-2023
PAGE 001 OF 001 * CHRONOLOGICAL DISCIPLINARY LOG (CONDENSED) * 14:37:48

REGISTER NO: 47891-424 NAME...: SMITH, CARLOS

FUNCTION...: DIS FORMAT: CONDENSED LIMIT TO MOS PRIOR TO 12-19-2023
RSP OF: THA-TERRE HAUTE FCI

G5401 * DISCIPLINE DATA DOES NOT EXIST FOR THIS INMATE *