

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:22-cr-00076
	)	Judge Greer
CHAD BRANDON THOMAS,	)	
	)	
Defendant.	)	

**SUPPLEMENTAL MOTION FOR SENTENCE REDUCTION UNDER
GUIDELINE AMENDMENT 821, PART B**

Chad Thomas, through undersigned counsel, and under 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10, and Guideline Amendment 821, Part B, respectfully files this supplement to his *pro se* motion for a reduced term of imprisonment. (Doc. 77.) Mr. Thomas requests a reduced term of 32 months, a point within the amended guideline range comparable to his original within-range sentence. Because it would move his release date forward to make him immediately eligible for transfer to a halfway house, he respectfully asks the Court to expedite its ruling on this motion.

A. Legal background

This Court may reduce a term of imprisonment, consistent with the policy statement at U.S.S.G. § 1B1.10, for an individual who “has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission,” and the Commission has designated the relevant ameliorating change as retroactive. 18 U.S.C. § 3582(c)(2).

Effective November 1, 2023, the Sentencing Commission created a new guideline, U.S.S.G. § 4C1.1 (Adjustment for Certain Zero Point Offenders), providing a decrease of two levels from the offense level determined under Chapters Two and Three for “zero-point” offenders who meet “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); and
- (10) the defendant did not receive an adjustment under § 3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848.

U.S.S.G. § 4C1.1(a); *see also* U.S.S.G. App. C, amend. 821 (Part B). The Sentencing Commission designated Part B of Amendment 821 as retroactively applicable. U.S.S.G. § 1B1.10(d).

When determining whether to grant a sentence reduction under § 3582(c)(2), a court must first “determine the amended guideline range that would have been applicable to the defendant had the relevant amendment [and all other applicable retroactive amendments listed in U.S.S.G. § 1B1.10(d)] been in effect at the time of the initial sentencing,” then “consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized [by the amended guidelines range] is warranted in whole or in part under the particular circumstances of the case.” *Dillon v. United States*, 560 U.S. 817, 826–27 (2010). Aside from applying the relevant part of Amendment 821, the Court “shall leave all other guideline application decisions unaffected.” U.S.S.G. § 1B1.10(b)(1); *see also id.* § 1B1.10(a)(3) (“[P]roceedings under 18 U.S.C. § 3582(c)(2) and this policy statement do not constitute a full resentencing.”).

B. Relevant facts

Mr. Thomas pled guilty to one count of wire fraud in violation of 18 U.S.C. § 1343 for conduct related to three Payroll Protection Program loans he obtained in 2020. (Judgment, Doc. 75.) At sentencing, held on August 21, 2023, the Court calculated the advisory guideline range as 37 to 46 months, based on a total offense level of 21 and criminal history category of I. (Sealed Statement of Reasons, Doc. 76.) This range was higher than the range in the PSR (calculated there as 33 to 41 months based on a total offense level of 20 (*see* Sealed Presentence Report [“PSR”] ¶¶ 47, 48, 97, R. 29)), because the government ultimately declined to move for the third level off for acceptance of responsibility. (Sent’g Tr. at 4-5, 27-28, R. 79.) As it had in its

sentencing memorandum, the government sought a sentence at the top of the lower range as calculated in the PSR (41 months), which fell toward the middle of the range calculated at sentencing. (*See id.* at 6.) The Court ultimately sentenced Mr. Thomas to 40 months in prison, three months above the bottom of the applicable guideline range and one month less than the government's requested sentence. (Judgment, Doc. 75.) In the process, the Court agreed with the government that the guideline range itself accounts by way of enhancements for most of the aggravating factors in his case (adding 14 offense levels), indicating that the higher point it chose within that aggravated range was meant to account for its § 3553(a) considerations. (Sent'g Tr. at 37, 39-40.) At the same time, the Court disclaimed that the § 3553(a) factors supported a sentence at the top of the range. (*Id.* at 39.)

The Court also acknowledged that the Sentencing Commission had recently voted to promulgate the 2-level reduction for zero-point offenders like Mr. Thomas (which would lower his final offense level to 19 and his range to 30 to 37 months) and that the Commission was considering making the amendment retroactive, but also that the amendment had not yet gone into effect. (Sent'g Tr. at 30, 32.) The Court decided that rather than prospectively grant Mr. Thomas a variance to reflect the likely amended range, it preferred to hold off until the changes were in effect and made retroactive. It suggested to Mr. Thomas that if the Commission were to make the zero-point amendment retroactive, he could then move for a reduction and the Court could exercise its discretion at that later time to decide whether and to what

extent it should grant a reduction, after it had an opportunity “to see how things progress from now until then.” (Sent’g Tr. at 32.)

Mr. Thomas is expected to complete his sentence in July 2025. Inmate Locator, Federal Bureau of Prisons, *available at* <https://www.bop.gov/inmateloc/> (accessed February 8, 2024).

C. Mr. Thomas is eligible for a reduction.

As established, Mr. Thomas is a “zero-point offender” who also meets the other criteria set forth in U.S.S.G. § 4C1.1 and is thus eligible for a two-level downward adjustment. (See PSR ¶ 57; Sent’g Tr. at 32.) Under Part B of Amendment 821, Mr. Thomas’s amended guideline range is 30 to 37 months. He is therefore eligible for a reduction in his sentence to 30 months, the bottom of the amended range. See U.S.S.G. § 1B1.10(b)(2)(A).

D. This Court should exercise its discretion to reduce Mr. Thomas’s term of imprisonment to 32 months.

Mr. Thomas humbly asks this Court to exercise its discretion to reduce his sentence to 32 months, a sentence within but not at the bottom of the amended range. The 40-month sentence the Court originally imposed fell approximately eight percent above the bottom of the then-applicable range of 37 to 46 months, meant to account for the § 3553(a) factors not already captured by the applicable enhancements under U.S.S.G. § 2B1.1. A reduced sentence of 32 months would reflect a comparable position of eight percent above the bottom of the amended range of 30 to 37 months. It is also one month below the top of the range that would apply under Amendment 821 if the government had moved for the third point for acceptance (27 to 33 months

based on offense level 18, CHC I), so is comparable to the government's requested sentence. Because it is comparably placed within the amended range, a 32-month sentence still accounts for the enhancements under § 2B1.1 for aggravating factors as well as the Court's § 3553(a) considerations. A sentence within the amended range of 30 to 37 months also best achieves the goal of avoiding unwarranted disparities with offenders with zero criminal history points, like Mr. Thomas—a goal the Court particularly emphasized at sentencing. (Sent'g Tr. at 29 (explaining why “imposing a sentence within a properly calculated advisory guideline range promotes” the need to “achieve uniformity in sentencing”).)

Perhaps most important, while in custody Mr. Thomas has endeavored to make real progress toward rehabilitation, as the Court encouraged him to do. (*Id.* at 40.) He reports that he completed drug education programming in January and is on the waiting list for two other classes. And he has incurred zero disciplinary infractions. (See Inmate Disciplinary Data, attached.)

Conclusion

Based on the above, Mr. Thomas respectfully asks this Court to exercise its discretion under § 3582(c)(2), § 1B1.10, and Part B of Amendment 821 and reduce his sentence to 32 months' imprisonment.

Respectfully submitted,

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