

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA,
Plaintiff,

v.

CHAD BRANDON THOMAS,
Defendant.

No. 2:22-cr-76

Judge Greer

RESPONSE TO § 3582(c)(2) MOTION

Thomas seeks a lesser sentence based on Guideline Amendment 821, Part B, which created U.S.S.G. § 4C1.1 and reduced by two levels the offense level for certain offenders who had received no criminal history points, *i.e.*, zero-point offenders. (Doc. 77, Motion; Doc. 81, Supplemental Motion.) The United States agrees that Thomas is eligible for a reduction in his term of imprisonment under Amendment 821 and 18 U.S.C. § 3582(c)(2). The United States defers to the Court’s discretion whether and to what extent to reduce his term of imprisonment, subject to the limitations of 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10.

LEGAL BACKGROUND

Ordinarily, a court “may not modify a term of imprisonment once it has been imposed.” 18 U.S.C. § 3582(c); *accord Dillon v. United States*, 560 U.S. 817, 824 (2010). But a court may impose a reduced sentence, consistent with policy statements in the Sentencing Guidelines, where a defendant “has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission” via a retroactively applicable amendment. 18 U.S.C. § 3582(c)(2); *see also* U.S.S.G. § 1B1.10.

Part B of Amendment 821 created a two-level downward adjustment in the offense level of a defendant who “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); 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). The Sentencing Commission designated that part of the amendment as retroactively applicable, effective February 1, 2024. U.S.S.G. § 1B1.10(d), (e)(2).

As with the safety-valve provision of the Guidelines, the defendant bears the burden to prove his eligibility for this new downward adjustment. *See, e.g., United States v. Reinberg*, 62 F.4th 266, 268 (6th Cir. 2023) (“The defendant bears the burden of proving by a preponderance of the evidence that []he meets each and every criterion”) (internal citation and quotation marks omitted). A defendant who does not satisfy all the criteria is categorically ineligible for any sentence reduction under Amendment 821, Part B.

When determining whether to grant a sentence reduction under 18 U.S.C. § 3582(c)(2), a court must first “determine the amended guideline range that would have been applicable

to the defendant had the relevant amendment 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*, 560 U.S. at 826-27. 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) (disallowing “a full resentencing”). As relevant here, the Court may not reduce the sentence below the minimum of the amended guideline range. U.S.S.G. § 1B1.10(b)(2)(A), (B). “In no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.” U.S.S.G. § 1B1.10(b)(2)(C). Finally, “the decision whether and to what extent to grant an authorized sentence reduction is discretionary,” not automatic. *United States v. Monday*, 390 F. App’x 550, 554 (6th Cir. 2010).

RELEVANT FACTS

Thomas fraudulently obtained three Payroll Protection Program loans totaling \$307,700. (Doc. 3, Plea Agreement at ¶ 4.) In 2022, he pleaded guilty to a single count of wire fraud in violation of 18 U.S.C. § 1343. (*Id.* at ¶ 1.) The Court later calculated the applicable guideline range as 37 to 46 months’ imprisonment, based on a total offense level of 21 and criminal history category of I. (Doc. 76, Sealed Statement of Reasons.) Six months ago, the Court sentenced Thomas to 40 months in prison, having determined that such a sentence would be sufficient but not greater than necessary to satisfy the 18 U.S.C. § 3553(a) factors. (Doc. 75, Judgment.) Thomas is expected to complete that sentence in July 2025. (Exhibit 1, Inmate Profile.)

While in custody, Thomas has completed one hour of programming, plus the mandatory drug education course; he was recently referred for screening to assess his eligibility for the

residential drug abuse treatment program the Court recommended. (*Id.*; Exhibit 2, Education Transcript; Doc. 75, Judgment at 2.) *See also* Federal Bureau of Prisons Program Statement 5330.11, at § 2.3.6, *available at* <https://www.bop.gov/policy/progstat/5330.11.pdf> (accessed Feb. 22, 2024) (stating that the drug education course requires 12 to 15 hours of programming, participation during sessions, and at least 70% correct answers on a 10-question test, which may be taken up to three times). Thomas has not incurred any disciplinary sanctions, and the Bureau of Prisons considers him a low risk of recidivism, the second-lowest level on its four-level scale. (Doc. 81-1, Disciplinary Record; Exhibit 1, Inmate Profile.)

ANALYSIS

Thomas is a “zero-point offender” (Doc. 29, Sealed Presentence Report at ¶ 57), and the United States agrees that he has satisfied the other criteria in U.S.S.G. § 4C1.1, so he is eligible for a two-level downward adjustment. Under Amendment 821, Part B, his amended guideline range is 30 to 37 months, based on a total offense level of 19 and a criminal history category of I. So the lowest sentence authorized by Amendment 821 and U.S.S.G. § 1B1.10(b)(2)(B) is a term of 30 months’ imprisonment. Thomas seeks a 32-month sentence, acknowledging that the Court previously declined to impose a bottom-of-the-guidelines sentence. (Doc. 81, Motion at 5-6.)

The Court could also reasonably elect not to reduce Thomas’s sentence at all. U.S.S.G. § 1B1.10, cmt. n.1(B)(iii); *see also id.*, bkg’d (“[t]he authorization of . . . a discretionary reduction does not . . . affect the lawfulness of a previously imposed sentence . . . and does not entitle a defendant to a reduced term of imprisonment as a matter of right”). Thomas’s offense conduct was extremely serious (*see generally* Doc. 68, Sentencing Memorandum), and the Court could thus conclude that his existing 40-month prison sentence remains appropriate.

In the end, the United States defers to the Court's discretion whether and to what extent to reduce Thomas's term of imprisonment, subject to the limitations in U.S.S.G. § 1B1.10 and 18 U.S.C. § 3582(c)(2).

Respectfully submitted,

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