

**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.	)	

**REPLY TO GOVERNMENT’S RESPONSE TO MOTION FOR SENTENCE
REDUCTION UNDER GUIDELINE AMENDMENT 821, PART B**

The government agrees that Chad Thomas is eligible for a reduction in his sentence under Amendment 821 and further agrees that he is eligible for a reduction to a comparably within-range sentence of 32 months, as Mr. Thomas requests. (Gov’t Resp. at 1, 4, Doc. 82.) The government also acknowledges that Mr. Thomas has not incurred any disciplinary infractions while in BOP custody. (*Id.* at 4.) The government does not oppose a reduction, leaving it to the Court’s discretion whether and to what extent it should grant relief. (*Id.* at 1, 5.) Mr. Thomas respectfully submits this reply to address the government’s suggestion that the Court might reasonably deny his motion.

The government suggests that the seriousness of Mr. Thomas’s conduct in this case could reasonably support a decision not to grant any reduction at all. (*Id.* at 4.) But his sentence of 40 months is now above the top of the range that applies today, so if left intact would in effect be an upward variance. Nothing in the case supports an upward variance, while everything supports a comparable within-range sentence.

As outlined in Mr. Thomas's motion, the Court's decision to impose a sentence three months above the bottom of the then-applicable range of 37 to 46 months was meant to account for all the aggravating factors present in the case, as measured and informed by the U.S. Sentencing Commission, as well as the Court's independent consideration of § 3553(a) factors—so it fully accounted for the seriousness of Mr. Thomas's conduct. (*See* Supp. Motion at 4, Doc. 81.) The 40-month, within-range sentence thus reflected guideline enhancements totaling 16 offense levels¹ and the Court's consideration of his conduct under § 3553(a), which it said did not support a sentence at the top of the range. (*See id.*)

Mr. Thomas's amended guideline range of 30 to 37 months still includes all the same 16 offense levels for aggravating conduct accounting for the seriousness of his conduct. A sentence two months above the bottom of that range would therefore still account for the seriousness of his conduct as measured and informed by the U.S. Sentencing Commission and considered by the Court under § 3553(a), and would reflect a comparable weighing of that seriousness vis-à-vis the applicable guideline range. In contrast, an above-range sentence of 40 months would weigh the seriousness of his conduct much more heavily than at the original sentencing. Now, instead of warranting a sentence eight percent above the bottom of the applicable

¹ Counsel for Mr. Thomas inadvertently misstated the number of offense levels reflecting guideline enhancements. It is 16 levels, not 14 levels. Mr. Thomas's guideline calculation included a 12-level enhancement for loss, which included loss amounts for dismissed counts reflecting repeated conduct; a 2-level enhancement for sophisticated means; and 2-level enhancement for misrepresenting that he was acting on behalf of a religious organization. (PSR ¶¶ 38, 39, 40, Doc. 29.)

range, Mr. Thomas’s same conduct would somehow warrant a sentence *thirty-three percent* above the bottom of the applicable applicable range—exceeding the top of the range by three months.

Data from the U.S. Sentencing Commission confirms that such an above-range sentence would create unwarranted disparities with similarly situated offenders. For fiscal years 2018 through 2022, nearly all offenders in Criminal History Category I whose primary guideline was § 2B1.1 and whose final offense level was 19 (so reflecting all aggravating guideline factors) were sentenced within or below the applicable range. See U.S. Sent’g Comm’n, *Judiciary Sentencing Information (JSIN) – 2018 to 2022* (2023) (filtered by primary guideline, criminal history category, and final offense level). Out of 387 total offenders in this category, just 8 people (representing a mere 2 percent of the category) were sentenced above the range.

There is nothing so unusually serious about Mr. Thomas’s conduct that would warrant relegating him in the ranks of this tiny cohort of outlier fraud offenders whose conduct warranted an upward variance or departure. And it would conflict with the rationale animating Mr. Thomas’s current sentence. At sentencing, the Court discussed the importance of the guideline range, explaining that “the guideline range is often important because it generally reflects a proper consideration of all those factors listed in 3553(a),” and that in this case, “they’ve done exactly that” so that the Court “start[s] with a guideline range that appears to reflect, in my view, all the 3553(a) factors.” (Sent’g Tr. at 28, Doc. 79.)

Reducing Mr. Thomas’s sentence to one within the amended range but still two months above the bottom (as he requests) is consistent with the Court’s treatment of the applicable guideline range as the appropriate starting point, the Commission’s evolved view of zero-point offenders as now reflected in the amended range, and the comparable placement in the amended range. It also accounts for Mr. Thomas’s conduct since the original sentencing, which confirms his lower risk of reoffending as recognized by the Commission through this amendment. U.S.S.G. App. C, amend. 821, pt. B (Nov. 1, 2023) (Reason for Amendment) (“[O]ffenders with zero criminal history points have considerably lower recidivism rates than other offenders, including offenders with one criminal history point.” (citing U.S. Sent’g Comm’n, *Recidivism of Federal Offenders Released in 2010* (2021))).

Mr. Thomas respectfully urges this Court to reduce his sentence to 32 months’ imprisonment.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

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