

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 21-CR-20011-MGC

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DAVID TYLER HINES
Defendant.

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**UNOPPOSED MOTION TO REDUCE SENTENCE PURSUANT TO
18 U.S.C. §3582(c)(2), AND §4A1.1 & §1B1.10 OF THE
UNITED STATES SENTENCING GUIDELINES**

David Tyler Hines, the Defendant, by and through his undersigned counsel, files this Motion to Reduce Sentence pursuant to 18 U.S.C. § 3582(c)(2), §4A1.1 and §1B1.10, U.S. Sentencing Guidelines. The Defendant puts forth the following in support of this motion:

I. Introduction

On January 8, 2021, the Government charged Mr. Hines, by Information, with one count of wire fraud in violation of 18 U.S.C. §1343. On February 10, 2021, Mr. Hines accepted responsibility and pled guilty to the Information.

The United States Probation Office prepared a presentence investigation report ("PSI") that concluded Mr. Hines total offense level was 26 with a criminal history category III based on five criminal history points. Two criminal history points were added pursuant to § 4A1.1(d) because Mr. Hines was under a criminal justice sentence at the time of the commission of the offense. Accordingly, his guideline imprisonment range was 78 to 97 months.

On May 12, 2021, the Court sentenced Mr. Hines to 78 months, the lowest permissible sentence under the advisory guideline range.

II. Amendment 821 / §4A1.1 / §1B1.10

Mr. Hines qualifies for resentencing as the sentencing guidelines have been revised to eliminate criminal history status points, and the retroactive application of these changes is permitted. On April 27, 2023, the Sentencing Commission voted to promulgate Amendment 821 to the Sentencing Guidelines. In part, this amendment alters the application of the Guidelines with respect to certain offenders who (a) earned criminal history “status points” based on commission of an offense while serving a criminal justice sentence, or (b) presented zero-criminal history points at the time of sentencing. Amendment 821 became effective on November 1, 2023.

Specifically, and as applicable to Mr. Hines, the amendment reads in pertinent part, “Section 4A1.1 is amended—by striking subsection (d) as follows: “(d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.” Essentially, the amendment eliminates status points for inmates such as Mr. Hines who committed the offense while under a criminal justice sentence.

On August 24, 2023, the Commission voted to give retroactive effect to amendments. Although inmates can file motions beginning on November 1, 2023, the effective date of an order reducing a sentence should not commence until February 1, 2024. Specifically, §1B1.10 states, “the court shall not order a reduced term of imprisonment based on Part A or Part B, Subpart 1 of Amendment

821 unless the effective date of the court's order is February 1, 2024, or later." Accordingly, if the Court grants Mr. Hines' Motion his total offense level would remain at 26, but his criminal history Category III would be reduced to Category II with a corresponding advisory guideline range of 70-87 months.

III. Mitigating Factors

Mr. Hines' post incarceration behavior demonstrates that a sentence reduction is appropriate and consistent with the amendments. 18 U.S.C. § 3582(c)(2) permits the Court to reduce the sentence of a defendant whose sentencing range has been lowered by the Sentencing Commission "after considering the factors set forth in section 3553(a) to the extent that they are applicable." While in prison, Mr. Hines has availed himself of several evidence-based recidivism reduction programs including, anger management, drug education, non-residential drug abuse program, Walk with Ease, Brain Health and GED preparation classes. Additionally, Mr. Hines obtained his GED and completed the following ACE (Adult Continued Education) courses, physical science, life science, reading comprehension, manifest destiny, soft skills, personal finance and social studies. Furthermore, Mr. Hines has completed the BOP's "productive activities" courses in tournament management, beginner painting, beginner leather and basketball officiating. Mr. Hines also served as a "suicide companion" where he was tasked with observing inmates who were in suicide watch cells.

Notably, Mr. Hines has maintained a perfect disciplinary record with no infractions or write ups. Moreover, he consistently tested negative in over seven

random urinalysis drug tests during his two and a half years in prison, proudly maintaining sobriety, the longest period since he was 14 years old.

IV. Government's Position

Undersigned counsel conferred with AUSA Michael Berger who indicated that the Government has no objection to the motion and the relief sought.

WHEREFORE, based upon the foregoing, Mr. Hines respectfully requests that the Court find that he qualifies for relief under 18 U.S.C. §3582(c)(2), §4A1.1 and §1B1.10 and amend his sentence to criminal history category II and reduce his total sentence to 70 months.

/S/Erick Cruz
ERICK CRUZ
Florida Bar No. 43628
1108 Ponce De Leon Blvd.
Coral Gables, FL 33134
(305) 444-3844
Cruz@ErickCruzLaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 13, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/S/ Erick Cruz
ERICK CRUZ