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FILED - FLMD - FLMUnited States District Court
Middle District of FloridaUS
✓Case #: 2:21-cr-00074-TPB-
KCD

Amber Bruey

Judge: Thomas Barber

Amended motion for Compassionate
Release / Reduction in Sentence
18 USC 3582 and Expedited Review

Petitioner, Amber Bruey, by way of pro se, comes before this court respectfully asking to file this amended 3582 motion in place of the one previously submitted in July in light of new information she asks the court to consider in rendering a decision. She also asks for an expedited review if possible.

In this compassionate release/reduction in sentence motion, petitioner asks the court to base its decision on amendment 821 regarding status points no longer applying to her; amendment 827- although not retroactive, if petitioner were to be sentenced today, her guidelines range would have been much lower, her post-conviction rehabilitation and current circumstances.

Amendment 821

On 11/1/2023, the Sentencing Commission enacted amendment 821, under 18 U.S.C. 3582(a) which comprised two parts.

Part B applied to 0 point offenders relating to criminal history. It will not be discussed in this petition, because petitioner falls under part A.

Part A: applied to offenders with status points. This is the part petitioner seeks relief under.

The Commission approved the amendment to be retroactive effective 2/1/24.

As a result, petitioner seeks relief under amendment 821, part A. The change eliminated status points for offenders who received these added points for being on probation at the time their instant offense was committed and if they had 6 or less criminal history points

Petitioner was assessed 4 criminal history points (which included 2 status points). As a result, petitioner meets the qualification to seek relief under this change in law.

Amendment 827

On 11/1/2024, the sentencing commission enacted amendment 827 to resolve the circuit split and ensure consistent loss calculation. In *Stinson v. US*, 508 U.S. 36, 38 (1993) the Supreme court held that commentary "that interprets or explains a guideline is authoritative unless it violates the Constitution or a Federal statute or is inconsistent with or plainly erroneous reading of that guideline." Following *Kisor v. Wilkie*, 139 S.Ct. 2400, 2415 (2019), the 3rd circuit held that application note 3(A) of the commentary is not entitled to deference which made the loss calculations for that circuit different than other circuits. This was resolved by the sentencing Commission's enactment of this amendment and guidelines ranges are now calculated based on actual loss amount instead of intended. Also see *Banks v. US* where "loss" was defined. This amendment was not made retroactive; however a 3582 motion can address

changes to the law that if petitioner was sentenced today would have affected her sentencing.

If sentenced today, with this amendment in place, petitioner's offense level would have been decreased by 2; reducing her offense level from 24 (after reduction for acceptance) to 22.

As calculated at sentencing:

Petitioner's base offense level: 7

Increase for loss greater than \$1,500,000: 16
enhancement: 2

Sophisticated means enhancement: 2

$$\begin{array}{r} 27 \text{ offense level} \\ - 3 \text{ acceptance} \\ \hline 24 \text{ offense level} \end{array}$$

If sentenced under amendment 827:

Base offense level: 7

Increase for loss greater than \$550,000: 14
enhancement: 2

Sophisticated means enhancement: 2

$$\begin{array}{r} 25 \text{ offense level} \\ - 3 \text{ acceptance} \\ \hline 22 \text{ offense level} \end{array}$$

At the time of sentencing, before either of these amendments, petitioner was given an offense level of 24 (noted above) and criminal history category of 3 (4 points). This resulted in a guideline range of 63-78 months. If sentenced today under both of these amendments, petitioner would have been an offense level 22 (based on actual loss of \$880,000 instead of intended and a criminal history category 2 because

Status points would no longer be applied. This would result in a significant decrease in the guidelines range to 46-57 months (a 17 month difference).

Petitioner was sentenced on 7/13/22 on multiple counts of wire fraud, conspiracy, and illegal monetary transactions related to the Paycheck Protection Program (PPP) and EIDL loan programs. The presentence report was prepared by probation and petitioner was assigned 2 criminal history points for prior non-adjudicated charges and then had 2 status points added for being under probation/supervision. This resulted in a total of 4 criminal history points and a resulting criminal history category of 3. As a result of Amendment 821, part A, status points are eliminated if offender had 6 or less criminal history points. Petitioner had 4 criminal history points so these status points assessed to her are eliminated, which reduces her criminal history points from 4 to 2. This results in a revised criminal history category. Bruey's criminal history category changes from category 3 to criminal history category 2. As described above, petitioner's offense level was 24, which with the revised criminal history category of 2 would result in a revised guidelines range of 57-71 months; then in considering Amendment 827, her guidelines would be reduced further (by 2 offense levels based on loss amount) resulting in a criminal history category of 2 and offense level of 22, which as previously mentioned reduces her guidelines range to 46-57 months - a 17 month difference from her guidelines range in place at the time of sentencing. The court graciously granted petitioner a downward departure of 15 months at sentencing for mitigating factors and sentenced her to 48 months incarceration to be followed by 3 years

Supervised release. Petitioner humbly asks the Honorable court to order the BOP to update her criminal history points from 4 to 2 which will decrease her current recidivism rating by 8 points moving her from a "low" recidivism rating to "minimum". She also asks this Honorable court to apply the same downward variance on her new guidelines range.

As stated, petitioner was granted a 15-month variance from the low end of the guidelines range at sentencing. (63 months - 15 month variance = 48 month sentence). With the new guidelines range, the low end is now 46 months. (46 months - 15 months = 31 months)

Granting this reduction in sentence based on the sentencing commission's enactment of amendments 821 and 827 and granting the same or similar downward variance for mitigating factors would not pose a disparity in sentencing and has been granted in other cases regarding amendment 821 and a further reduction/variance was granted. See US v. Christina Johnson, case #: 2:20-cr-000-17-JPH-Cmm-4 (defendant received a downward departure at sentencing and the court applied the same variance on the revised guidelines range.) See also US v. Nikki Mitchum (sentencing guidelines were 51-63 months, court sentenced her to 51 months, she filed amendment 821 reduction motion - new range was 41-51 months, but after she provided programming certificates, the court varied down further below the guidelines and reduced her sentence to 33 months for similar PPP related charges).

This court has the authority to resentence the petitioner under 18 USC 3582(c) regarding amendment 821, consideration of amendment 827,

post-conviction rehabilitation and other compelling reasons.

The petitioner's behavior while in BOP custody is an important indicator of whether she remains a danger to her community. Pursuant to 18 USC sec. 3582(G)(2019) and 18 USC 3582(c)(1)(A)(ii), Courts place significant weight on a defendant's post-sentencing conduct because it "poses the most up-to-date picture of her history and characteristics." As a result of *Peppers*, it is not uncommon for courts to consider post-conviction rehabilitation for reduction requests. See *Peppers v. US*.

The First Step Act does not prohibit the District Courts from considering evidence of rehabilitation or unrelated guidelines changes. Under the First Step Act, courts will review the resentencing of a defendant under the auspices of the law in effect as of that day, "not the date of her offense or date of her conviction." *Id.* at 2396 (citing *Pepper v. US*) 562. US 476, 492, 131 S. Ct. (2011). Amendment 821 nor amendment 827 were in place at the time Bruey was sentenced, but if she were to be sentenced today her guidelines range and therefore her sentence could have been lower. While USSG 1B1.10(b)(2) implies a reduction further below the amended guideline range would generally not be appropriate; there is nothing that strictly prohibits the court from doing so and therefore this court is free to use its discretion when reviewing this reduction request and considering any mitigating factors including post-conviction rehabilitation and other factors warranting a reduction. Under 1B1.10 the court may reduce the term of imprisonment under 18 USC 3582(c)(2) when the guidelines ranges have been lowered as a result of an amendment.

Petitioner self-surrendered to FPC Alderson on 5/12/2023 and has an FSA conditional release date of 10/6/25. In determining 3553(a) factors, defendant's post-conviction conduct supports a reduced sentence. The petitioner's offense did not include violence or threats of violence, nor does she have a violent criminal history. Petitioner was under USPO supervision for 20 months on pretrial before surrendering and remained in compliance. She has also now served approximately 19 months (45.6% of her FSA conditional release date sentence) see attached exhibit 1. She has maintained clear conduct throughout her incarcerative period as well as her time on pretrial. During her incarceration Bvey has completed various courses and programs (EBRR + PA courses) including: Financial Literacy + Money Smart courses, a Trauma course, family + parenting courses, job skills, American sign language, drug education + non-residential drug treatment program, conflict resolution + various health, religious services, + recreational courses. She also completed a Peer Support Program + is still involved in a volunteer program that helps guide new inmates around the compound + orients them to rules + schedules called: Women Giving Back. She has earned 33 certificates from FPC Alderson (Please see attached), as well as 13 certificates from outside correspondence prison ministry courses for a total of 46 completed programs. Petitioner also completed the HVAC vocational training program on December 4, 2024 and has held a job as both a GED/ESL and vocational training teacher's aide since July 2023. With all of this she is gaining valuable skills that will be used upon her release from prison. The petitioner's successful completion of prison education programs makes her less likely to recidivate after release. Petitioner has attached completed course certificates and reference letters.

While the petitioner does not seek recognition for completing programs and classes that she is expected to and supposed to complete, she does wish to raise the argument of a study from RAND Corp. See Lois M. Davis et. al, "Evaluating the Effectiveness of Correctional Education to Incarcerated adults, (2021)". This study found that "On average, inmates who participated in correctional programs had 43% lower odds of recidivating than inmates who did not." As another court opined, this model behavior, "demonstrates a respect for the law and indicates how the defendant may perform on supervised release." United States v. Sweet, No. 07-20369, 2021 US Dist LEXIS 69177, 2021 WL 1430836, at *3 (E.D. Mich. April 15, 2021). Petitioner has been a "role model" inmate and her rehabilitation and clear conduct on pretrial and during her incarceration are indicative of her future law abiding behavior therefore supporting a reduction in sentence.

Other compelling reasons

Petitioner does not wish this to be construed as a habeas petition as she knows the venue and proper venue for such would be in her incarcerative district, but she wishes to inform the court of other factors that she believes weigh in her favor of granting a reduction and that she respectfully asks the court to consider. Petitioner has been deemed eligible to return to her community by her unit team at Alderson which referred her for 9 months second chance and 40 additional FSA days she will earn. The date on her referral requested a placement date of 12/27/24. Petitioner's home in NC and relocation to NC was approved by US probation in September and the

community placement referral was submitted to the RRM on October 7, 2024. Unit team recommended RRC (halfway house), Home confinement or FLM (Federal location monitoring) through probation. Please see attached referral-exhibit 2 (2 sided). The RRM stated they did not have bedspace until 6/5/25 and gave that placement date despite the requested date being almost 6 months prior. Other courts have found that lack of bedspace should not reduce or limit placement and that inmates do have a protected liberty interest in placement in prerelease custody. Again, petitioner is not trying to argue a habeas claim in this petition, but rather show that she has 10 months remaining on her sentence until her FSA conditional release date (10/6/25) and that she has already been deemed appropriate for transfer back to her community by the BOP/ her unit team who best know her history and needs. Additionally, USPO Mike Dilda has agreed to monitor her on FLM if contacted by the BOP. See contact info in exhibit 3.

Additionally, while incarcerated, petitioner has been diagnosed with lupus and sleep apnea in addition to her other pre-existing conditions. Petitioner is not claiming an inability to care for herself or a debilitation from her illnesses, but being incarcerated with health issues has posed a challenge and with the determination by unit team that she is appropriate for transfer to community placement and the ability to obtain more frequent and better quality medical attention in her community she asks that this be considered in her reduction request as well.

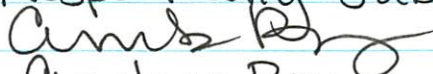
If granted this sentence reduction as a result of amendment 821, part A, amendment 827,

post-conviction rehabilitation, and the other compelling reasons including her programming and behavior while incarcerated and ability to be placed in prerelease custody at this time based on unit team's 5 factor review, it would not pose a threat to her community or pose a disparity in sentencing. Petitioner is non-violent and poses no threat to her community (as she is currently eligible for community placement) and will in fact be an asset to her community upon her return. It also will not diminish the seriousness of her crime.

Petitioner humbly and respectfully asks this Honorable Court to reduce her term of imprisonment to time served and to alter her term of supervised release to include a period of GPS location monitoring if deemed acceptable. Petitioner is already eligible for community placement based on her current 48 month sentence and USPO Dilda has agreed to monitoring her during a period of community placement. Amendment 821 and 827 would further reduce her guidelines and sentence which is why she asks for time served with a period of GPS monitoring during supervised release. Based on her FSA conditional release date, petitioner has less than 10 months remaining until her release date. This reduction would result in a sentence that is sufficient, but not greater than necessary to meet the goals of sentencing, deter future criminal conduct, uphold respect for the law, and will not result in sentencing disparities. If this Court deems a different reduction to be more appropriate, then petitioner respectfully requests whatever this Court deems as best to be granted. Petitioner also respectfully asks that this motion be reviewed as expeditiously as possible. While individually the issues may not warrant a reduction, petitioner asks that all the issues be considered as parts of the whole which she believes + hopes the court does as well - warrants a reduction.

For all of the aforementioned reasons, petitioner humbly and respectfully requests a resentencing (sentence reduction) pursuant to 18 USC 3582. J

12/9/24
Date

Respectfully Submitted,

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