

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 22-CR-20326-MOORE

UNITED STATES OF AMERICA

vs.

ANDRE LORQUET,

Defendant.

**UNITED STATES OF AMERICA’S RESPONSE TO DEFENDANT’S MOTION FOR
SENTENCE REDUCTION PURSUANT TO 18 U.S.C. § 3582(c)(2)**

The United States opposes Defendant Andre Lorquet’s motion for sentence reduction, pursuant to 18 U.S.C. § 3582(c)(2) (DE 153). Defendant requests relief based on the zero-point offender provision of Amendment 821. He also requests the appointment of counsel. The motion should be denied because Defendant has already received the benefit of Amendment 821 and he is not entitled to the appointment of counsel.

I. PROCEDURAL BACKGROUND

On June 22, 2022, a federal grand jury sitting in this district returned an indictment charging Lorquet with wire fraud, in violation of 18 U.S.C. § 1343 (counts 1-4); money laundering, in violation of 18 U.S.C. § 1957 (counts 5-8); and aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1) (count 9) (DE 1). On January 24, 2023, Defendant pleaded guilty to money laundering (count 7) and aggravated identity theft (count 9) (DE 44).

In anticipation of sentencing, the United States Probation Office prepared a pre-sentence investigation report (“PSI”) (DE 53). Because Defendant had zero criminal history points, he met the criteria for a zero-point offender reduction under § 4C1.1(a) and (b), as established in the third

addendum to the PSI (DE 108). In addition, due to newly discovered evidence, the government dismissed count 9 of the indictment, leaving Lorquet to be sentenced to only count 7 (DE 147:5).

As such, Defendant's total offense level was calculated at 25 with a criminal history category of I (DE 108:2). His guideline imprisonment range was 57 to 71 months (DE 108:2).

At the sentencing hearing on March 7, 2024, the Court sentenced Lorquet to 71 months imprisonment and three years of supervised release (DE 110; DE 147:21). On June 26, 2024, the judgment was amended to include restitution in the amount of \$1,855,787.52 (DE 136).

Lorquet filed an appeal on March 22, 2024 (DE 117). The appeal is still pending (24-10902).

In December 2024, Defendant filed the instant motion for a sentence reduction under 18 U.S.C. § 3582(c)(2) (DE 153). Defendant requests a sentence reduction based on his "zero criminal history" (DE 153:2).

Defendant is serving his sentence at FCI Memphis, with an anticipated release date of February 12, 2028. Defendant has served approximately 24 months of his total sentence or about 33% (Public Information Inmate Data). Defendant's disciplinary history while in custody includes being unsanitary or untidy, possessing a hazardous tool, and refusing to obey an order (Inmate Discipline Data).

II. LEGAL STANDARD AND ARGUMENT

A motion to reduce an otherwise final sentence under 18 U.S.C. § 3582(c)(2) is a limited and narrow exception to the rule that final sentences are not to be modified. *See United States v. Armstrong*, 347 F.3d 905, 909 (11th Cir. 2003). Specifically, 18 U.S.C. § 3582(c)(2), provides:

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . the court *may* reduce the term of imprisonment, after consulting the factors set forth in section 3553(a) to the extent they are applicable, if such a

reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(2) (emphasis added). Thus, under 18 U.S.C. § 3582(c)(2), a district court must undertake a two-step process. *See Dillon v. United States*, 560 U.S. 817 (2010). First, the court must determine if the defendant is eligible for relief under 18 U.S.C. § 3582(c)(2). *Id.* at 826–27. The statute authorizes relief only if a retroactive amendment to the sentencing guidelines lowers the defendant’s applicable sentencing guidelines range *and* relief is consistent with applicable policy statements. *Id.* Two of those amendments concern a defendant’s criminal history and appear in Amendment 821. First, Part A of Amendment 821 alters a provision of the Guidelines that applies additional criminal history points, commonly referred to as “status points,” for offenders who committed their offense while subject to a criminal justice sentence. Second, Part B, Subpart 1 of Amendment 821 creates a new provision, Section 4C1.1, that provides a 2-level downward adjustment in offense level for certain offenders who present zero criminal history points. The applicable policy statement here bars a court from granting relief below the bottom of the amended guideline range. U.S.S.G. § 1B1.10(b)(2)(A).

Then, if a defendant is eligible for 18 U.S.C. § 3582(c)(2) relief, the court must determine if it will exercise its discretion to reduce that defendant’s sentence after it has considered the 18 U.S.C. § 3553(a) factors¹, *id.* at 826–27, and “the nature and seriousness of the danger to any

¹ The 18 U.S.C. § 3553(a) factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to accomplish certain aims, such as to reflect the seriousness of the offense, afford adequate deterrence, protect the public, or the defendant’s educational, medical, or correctional treatment needs; (3) the kinds of sentences available; (4) the applicable sentencing range under the guidelines; (5) any pertinent Sentencing Commission policy statement; (6) the need to avoid unwarranted disparities among defendants; (7) the need to provide restitution to any victim of the offense. 18 U.S.C. § 3553(a).

person or the community that may be posed by a reduction in the defendant's term of imprisonment." U.S.S.G. § 1B1.10, cmt. n. 1(B).

Under the § 1B1.10(a)(1) policy statement: "[i]n a case in which a defendant is serving a term of imprisonment, and the guideline range applicable . . . has subsequently been lowered as a result of an amendment . . . the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2)." Notably, "if a defendant receives a sentence modification under § 3582(c)(2), subsequent reduction based on the same amendment to the Guidelines is not available—the modified sentence is no longer based on the outdated Guidelines range." *United States v. Caraballo-Martinez*, 866 F.3d 1233, 1240 (11th Cir. 2017). Courts cannot "reduce [a] defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) . . . to a term that is less than the minimum of the amended guideline range." U.S.S.G. § 1B1.10(b)(2)(A).

LEGAL ANALYSIS

Eligibility

The defendant here seeks relief based on the zero-point offenders amendment. This provision "provide[s for] a decrease of two levels from the offense level . . . for defendants who did not receive any criminal history points . . . and whose instant offense did not involve specified aggravating factors." Application to Amendment 821 (Parts A and B, Subpart 1 Only), Amendment to the Sentencing Guidelines, https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202308_RF-retro.pdf. Specifically, a defendant must meet all the following criteria to be eligible for relief:

- (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.

The Court should deny this motion because Lorquet already received the benefit of Amendment 821's zero-point offender provision.² Pursuant to the third addendum to the PSI, Lorquet's total offense level was lowered due to "a two-level downward adjustment for offenders who have zero criminal history points, pursuant to § 4C1.1" (DE 108). As such, based upon a total offense level of 25 and a criminal history category of I, the guideline imprisonment range is 57 to 71 months (DE 108). This is a lower range than the original applicable guideline range of 70 to 87 months (PSI ¶ 101). At the sentencing hearing, Lorquet's counsel acknowledged the change, stating the guidelines were lowered due to the "application of 4C1.1, which was enacted in

² In the event that Defendant is seeking relief under the "status points" provision, that request would be plainly without merit given that he received no criminal history points (PSI ¶ 56).

November” (DE 147:6). The Court also adopted the new guideline range and sentenced Lorquet at the high end of the new range (DE 147:4; DE 147:21). Since Defendant already received the benefit he seeks, the Court should deny the instant motion.

III. APPOINTMENT OF COUNSEL

Lorquet’s request for the appointment of counsel should also be denied given that his request is plainly without merit. Courts have uniformly held that defendants do not have a Sixth Amendment right to counsel in connection with a § 3582(c) motion. *See United States v. Almaraz*, 2022 WL 1567124 (S.D. Fla. May 18, 2022) (citing *Webb*, 565 F. 3d at 794-95 (11th Cir. 2009)) (explaining that Circuit Courts have unanimously held that defendants have no constitutional or statutory right to counsel with respect to a motion to reduce a sentence). Instead, the district court has the discretionary authority to appoint counsel in the interests of justice. *See* 18 U.S.C. § 3006A(a)(2) (allowing appointment of counsel under certain circumstances when “the court determines that the interests of justice so require”). As such, Lorquet’s request for the appointment of counsel should also be denied.

Respectfully submitted,

MARKENZY LAPOINTE
UNITED STATES ATTORNEY

By: /s/ Carolina Perez Schmerold
Carolina Perez Schmerold
Assistant United States Attorney
Fla. Bar No. 1003503
99 Northeast 4th Street
Miami, FL 33132
Telephone: (305) 961-9004
Carolina.Perez@usdoj.gov

CERTIFICATE OF SERVICE

I certify that on December 19, 2024, I electronically filed this document with the Clerk of Court using the CM/ECF system and a copy was sent via U.S. Mail to: *Pro se* Defendant Andre Lorquet, Reg No. 07721-506, FCI Memphis, Federal Correctional Institution, Post Office Box 34550, Memphis, TN 38184.

By: s/ Carolina Perez Schmerold
Carolina Perez Schmerold
Assistant United States Attorney