

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 23-CR-00009-TPB

UNITED STATES OF AMERICA

Plaintiff,

vs.

DENIS CASSEUS,

Defendant.

**MOTION TO REDUCE SENTENCE BASED ON RETROACTIVE
APPLICATION OF AMENDMENT 821 TO THE SENTENCING GUIDELINES**

Defendant, **DENIS CASSEUS**, by and through undersigned counsel, files his Motion to Reduce Sentence pursuant to 18 U.S.C. § 3582(c)(2). In support, Mr. Casseus states as follows:

1. On January 25, 2023, Mr. Casseus was charged by Indictment with two counts of Bank Fraud in violation of 18 U.S.C. § 1344, two counts of False Statement to Lending Institution in violation of 18 U.S.C. § 1014, and one count of Illegal Monetary Transaction in violation of 18 U.S.C. § 1957 and on May 26, 2023, Mr. Casseus pled guilty to count one, count two and count five of the Indictment.

2. At Mr. Casseus' sentencing on October 20, 2023, the Court heard argument on Mr. Casseus' objection to his PSI regarding the two-level upward adjustment pursuant to USSG §2B1.1(b)(12), which was overruled by the Court. Defendant argued that his offense level should be at 17 which would bring his guideline range to 24-30 months. The Court overruled the objection, but nevertheless varied downward from the 30-37 months effective guidelines and sentenced Mr. Casseus to 24 months.

3. On April 27, 2023, the United States 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 points “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.

4. As Mr. Casseus presented zero criminal history points at the time of sentencing and otherwise meets all of the criteria of U.S.S.G. § 4C1.1, his sentence ought to be reduced, as a matter of law, in an equivalent manner.

5. Under U.S.S.G. § 4C1.1 if a Defendant meets all of the following criteria *and* was not otherwise engaged in a continuing criminal enterprise (as defined in 21 U.S.C. §848) this would decrease the offense level determined by Chapter Two and Three by two (2) levels:

(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 21U.S.C. § 848.

6. On August 24, 2023, the Commission also voted to give retroactive effect to the two changes described in paragraph five *supra*, on the same activation date of November 1, 2023. Although defendants can file motions beginning on this date, they would not be eligible for release from prison earlier than February 1, 2024, should their motion be granted.

7. U.S.S.G. § 1B1.10(b)(1) provides that in determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.

8. If Mr. Casseus receives a two (2) level reduction pursuant to § 4C1.1 and all other previously applied reductions, variances and enhancements are reapplied, his total offense level would be a Level 15, with a criminal history of Category I. This corresponds

to an advisory guideline range of 18-24 months.

9. At the time of sentencing, after the Court overruled the Defendant's objection relating to the 2-level upward adjustment for receiving benefits as defined in 18 USC §1040, the Defendant's effective guidelines were at 30-37 months. However, after hearing the 3553 factors, the Court departed downward and sentenced Mr. Casseus to 24 months. In doing so, the Court stated that a sentence of 24 months was fair and appropriate in this case.

10. Mr. Casseus is asking the Court to grant him a 2 level reduction, despite the previously granted two level variance, when he was sentenced to 24 months.

MITIGATING FACTORS IN FAVOR OF GRANTING THIS MOTION

Mr. Casseus has not had any disciplinary issues since his incarceration in the Bureau of Prisons. On the contrary, he has followed all rules and regulations. Mr. Casseus has been participating in various programs: the Money Smart Program, which covers financial topics of importance of saving and how to use credit effectively, the Brain Health as You Age Program, which fosters self-improvement, the Parenting Program and various continuing education programs. He is also working while incarcerated.

Mr. Casseus is the father of five children ages 9 months old, 3-years-old, 6-years-old, 17-years-old, and 19-years-old. Mr. Casseus' wife has certain medical issues that are mentioned in Defendant's PSI (DE 45, ¶ 58), and she is having a difficult time financially and taking care of the children on her own. Mr. Casseus' wife and children are in the process of relocating from the home where they lived due to the forfeiture of the residence. Prior to being incarcerated, Mr. Casseus worked as a patient transporter for Best Joint Care

Center and earned a good living. An earlier release from incarceration will permit Mr. Casseus to help his wife financially and help take care of the children.

Furthermore, Mr. Casseus has obviously never been to prison before due to having no criminal history. Any time of incarceration is a life learning lesson for him. If the Court was to reduce Mr. Casseus's sentence to 18 months, such sentence would provide adequate deterrence, reflect the seriousness of the offense and provide just punishment for the offense.

Pursuant to Local Rule 88.9, undersigned counsel contacted AUSA Yolande Viacava, who does object to the relief sought in tis motion.

WHEREFORE, based upon the foregoing, Mr. Casseus respectfully requests that this Court find that he is eligible for relief under 18 U.S.C. § 3582(c)(2) because he was sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission, given § 4C1.1. Mr. Casseus asks that this Court consider the factors set forth in 3553(a) and his conduct during his period of incarceration in this cause and requests this Court to reduce his term of imprisonment downward given the reduction to his total offense level and the corresponding advisory guideline range.

CERTIFICATE OF SERVICE

I HEREBY certify that on February 9, 2024, undersigned counsel electronically filed foregoing document with the Clerk of Courts using CM/ECF which will send notification of such filing to all counsel of record.

Respectfully submitted,

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