

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 2:23-cr-9-TPB-KCD

DENIS CASSEUS

**UNITED STATES' AMENDED RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO REDUCE SENTENCE BASED ON
RETROACTIVE APPLICATION OF AMENDMENT 821 (DOC. 64)**

The United States of America, by and through the undersigned Assistant United States Attorney, files this amended response in opposition to defendant's motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 821 of the U.S. Sentencing Guidelines. Doc. 64. For the reasons set forth below, defendant's motion is due to be denied.

1. On May 23, 2023, defendant, Denis Casseus, pleaded guilty to Counts One and Two (bank fraud) and Count Five (illegal monetary transaction) of the Indictment in this case pursuant to a written plea agreement. Doc. 30. On May 26, 2023, this Court accepted defendant's guilty plea and adjudicated him guilty of Counts One, Two, and Five. Doc. 38.

2. The presentence investigation report dated August 11, 2023 (PSR) correctly stated, and the Court ultimately determined, that defendant's advisory sentencing guideline range 30-37 months' imprisonment, based on a total offense level of 19 and a criminal history category of I. *See, e.g.*, PSR (Doc. 45) at ¶ 75. On

October 20, 2023, this Court sentenced defendant to a term of 24 months' imprisonment, which constituted a downward variance. Docs 59, 60.

3. On December 15, 2023, defendant filed a motion for a reduction in his sentence, seeking a two-level downward adjustment under Amendment 821 of the U.S. Sentencing Guidelines.¹ In his motion, defendant argues that he is a “zero-point” offender and satisfies all of the criteria under U.S.S.G. §4C1.1(a) for the retroactive application of Amendment 821 and resulting two-level downward departure in his total offense level. Doc. 64 at 2-3.

4. On May 1, 2024, the United States Probation Office filed its Amendment 821 Memorandum pursuant to the Court's Order Regarding Amendment 821 to the United States Sentencing Guidelines, Case No. 3:21-mc-1-TJC (doc. 115). Doc. 78. In this memorandum, the assigned Probation Officer noted:

Retroactive application of Amendment would lower the defendant's applicable guideline range; however, the defendant received a sentence that was equal to or less than the minimum of the amended guideline range as adjusted by a comparable substantial assistance departure, if applicable. Pursuant to USSG §1B1.10(b)(2)(A), except as provided in USSG §1B1.10(b)(2)(B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and §1B1.10 to a term that is less than the minimum of the amended guideline range.

¹ This motion was filed by defendant's retained counsel. The Federal Public Defender's Office was subsequently appointed to represent defendant in these Amendment 821 proceedings, and retained counsel was permitted to withdraw. Doc. 77. On May 20, 2024, court-appointed counsel filed a notice indicating, among other things, that defendant “would like the Court to rule on [Doc. 64] and will represent himself pro se if necessary.” Doc. 83 at 3. On May 29, 2024, the Federal Public Defender's Office filed a motion to terminate representation. Doc. 84. On June 3, 2024, the Court granted the Federal Public Defender's Office's motion and discharged it from its representation of defendant. Doc. 85.

Id. at 3. The Amendment 821 Memorandum further states that “[r]etroactive application of ... Part B, subpart 1, of Amendment 821 provides for a range of 24 to 30 months’ imprisonment, and the defendant was previously sentenced to a 24 month term of imprisonment.” *Id.* Accordingly, the Probation Officer concluded that defendant is ineligible any further relief under Amendment 821. *Id.* at 1.

5. The Probation Officer’s analysis is correct. Although defendant has zero criminal history points, the Court awarded defendant a downward variance at sentencing to the equivalent what would have been defendant’s amended guideline range, that is, 24-30 months’ imprisonment. *See also* Doc. 83 at 2. The statement of reasons suggests that this Court likely did so to give defendant “advance” credit for the “zero point” status departure of Amendment 821, which was to take effect 11 days after the sentencing hearing. *See* Doc. 60 at 4, VIII.

6. Accordingly, defendant does not qualify for retroactive application of Amendment 821 and the resulting two-level downward departure, and his motion should be denied.

WHEREFORE, the United States respectfully requests that this Court deny defendant's motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 821 of the U.S. Sentencing Guidelines (Doc. 64).

Respectfully submitted,

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Case No. 2:23-cr-9-TPB-KCD

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2024, I electronically filed this document with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

Laura Ferro, Esq.
Assistant Federal Public Defender

Zeljka Bozanic, Esq.

I also certify that on June 3, 2024, a correct copy of this document and the notice of electronic filing were sent by United States Mail to the following:

Denis Casseus, Register No. 42013-510
FPC Pensacola
Federal Prison Camp
P.O. Box 3949
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s/ D. Rodney Brown
D. RODNEY BROWN
Assistant United States Attorney