

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK WILLIAMS : CIVIL ACTION  
: :  
: :  
v. : NO. 99-2756  
: :  
UNITED STATES OF AMERICA : (CRIMINAL NO. 94-462-1)

MEMORANDUM ORDER

This is a petition for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2). Petitioner was convicted of various narcotics and firearms offenses. With five prior convictions and 16 criminal history points, he was in Category VI. He faced a sentence of 210 to 262 months of imprisonment plus a statutorily mandated consecutive 60-month sentence pursuant to 18 U.S.C. § 924(c)(1)(A)(i) & (D)(ii). Petitioner was sentenced on December 6, 1996 to imprisonment for 270 months to be followed by five years of supervised release. The judgment was affirmed on July 6, 1997. Petitioner filed a petition to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 which was denied on September 19, 2000. The Court of Appeals denied defendant's request to issue a certificate of appealability.

Petitioner was charged in a seven count indictment. In count one, he was charged with possession of crack cocaine with intent to distribute on May 17, 1994 and in count two with possessing a firearm in relation to that drug trafficking crime. In count three, he was charged with possession of crack cocaine

with intent to distribute on July 6, 1994 and in counts four and seven respectively with possession of a firearm during that drug trafficking offense and after conviction for a felony. In count five, petitioner was charged with possession of crack cocaine with intent to distribute on September 17, 1994 and in count six with possession of a firearm by a convicted felon in connection with that occurrence. The government dismissed the firearm charge in count two as part of a plea bargain.

Title 18 U.S.C. § 3582(c)(2) provides in pertinent part that:

in 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 modify a term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Petitioner correctly notes that he received a two-level enhancement for possession of a dangerous weapon during the commission of the drug offense of May 17, 1994 pursuant to U.S.S.G. § 2D1.1(b)(2). He suggests that this enhancement has been retroactively eliminated by Amendment 599 which amended application note 2 to U.S.S.G. § 2K1.4.

The calculation of defendant's guideline range was entirely consistent with Amendment 599. The amendment instructs that additional specific offense characteristics should not be

applied when the underlying offense for which a sentence is imposed is a violation of 18 U.S.C. § 924(c). There was no enhancement in connection with the drug offenses of July 6 and September 17, 1994 for possession of a firearm as that conduct was the basis of separate offenses of conviction. Count two was dismissed and petitioner was not convicted of possession of a firearm in relation to the underlying drug offense of May 17, 1994. Accordingly, the enhancement for his possession of a firearm on that occasion was proper and consistent with the subsequent amendment. Had the government not agreed to dismiss count two and had petitioner been convicted, he would have faced a statutory mandatory consecutive sentence of 20 years of imprisonment.

**ACCORDINGLY**, this            day of May, 2002, **IT IS HEREBY ORDERED** that petitioner's Petition to Modify Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(2) (Doc. #72) is **DENIED**.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**