

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	No. 98-393-02
v.	:	
	:	CIVIL ACTION
THOMAS HALL	:	No. 03-781

AMENDED MEMORANDUM

ROBERT F. KELLY, Sr. J.

MAY 17, 2005

Presently before the Court is the *pro se* Motion for a Reduction of Sentence Pursuant to 18 U.S.C. § 3582 (c)(2) filed by Thomas Hall (“Hall”) and the Government’s Response thereto.¹ Upon consideration of the parties’ respective filings, the Motion for a Reduction of Sentence is denied.

I. BACKGROUND

Hall was indicted in August 1998, with Luis Rodriguez (“Rodriguez”) and Jerry Nate Brooks (“Brooks”). Brooks pled guilty and testified at trial against Rodriguez and Hall, both of whom were found guilty on November 13, 1998, of Count One, conspiracy to possess with intent to distribute cocaine and Count Two, carrying and using a firearm in relation to a drug trafficking crime. Hall was sentenced to ninety-seven months incarceration on Count One, to be followed by sixty months incarceration on Count Two. Hall’s appeal to the Court of Appeals for the Third Circuit (“Third Circuit”) was denied on March 8, 2000. His petition for a rehearing *en banc* was denied by the Third Circuit on December 12, 2001. Hall’s initial petition under 18 U.S.C. § 2255 was denied without a hearing on July 15, 2003. Hall’s request for a certificate of

¹ Since Hall is acting *pro se*, I will “hold his documents to a less stringent standard than those drafted by attorneys.” United States v. Jasin, 280 F.3d 355, 361 (3d Cir. 2002).

appealability, to contest the denial of his Section 2255 petition, was denied by the Third Circuit on February 5, 2004. Relying upon 18 U.S.C. § 3582 (c)(2) and the decision by the United States Supreme Court (“Supreme Court”) in United States v. Booker, --- U.S. ---, 125 S. Ct. 738 (2005). Hall filed the instant Motion for a Reduction of Sentence on April 5, 2005. The Government filed its Response on May 2, 2005.

II. DISCUSSION

Hall filed this Motion for a Reduction of Sentence under 18 U.S.C. § 3582 (c)(2).

18 U.S.C. § 3582 (c)(2) provides:

- (c) The court may not modify a term of imprisonment once it has been imposed except that ---
- (2) 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 pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the 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.

18 U.S.C. § 3582 (c)(2). “The provisions of § 3582 (c)(2) are triggered when an amendment to the guidelines results in the lowering of the sentencing range under which a defendant was sentenced.” United States v. Caldwell, 155 F. Supp. 2d 292, 294 (E.D. Pa. 2001)(citation omitted).

Relying upon Booker, Hall argues that he is entitled to a reduction of sentence because “Booker lowered [his] guideline range by allowing the judge discretion to impose a sentence without regard to the now advisory guideline range.” (Hall’s Mot. Reduction Sentence at

2). Hall contends “that had the judge not been bound by the mandatory nature of the guidelines, he would have received a lower sentence, because the judge would have exercised his discretion based on the facts and other circumstances.” (Id. at 3). The Government responds to Hall’s argument by pointing out that there have been no reductions in the offense level designation applicable to Hall, nor have there been any changes in the mandatory sentencing under 18 U.S.C. § 924. Since the Sentencing Commission has not lowered any sentencing range applicable to Hall, the Government argues that no relief can be granted pursuant to 18 U.S.C. § 3582 (c)(2). I agree with the Government’s argument, and conclude that Hall is not entitled to a reduction in sentence because he has failed to point to any reduction by the Sentencing Commission as required by Section 3582 (c)(2).

I now turn to Hall’s argument which addresses the application of the ruling in Booker to the instant action. In order to understand the Supreme Court’s ruling in Booker, it is necessary to discuss the legal landscape leading up to the Booker decision. In 2000, the Supreme Court decided Apprendi v. New Jersey, 530 U.S. 466, 477 (2000). In Apprendi, the defendant entered a guilty plea to state firearm offenses. Apprendi, 530 U.S. at 466. The trial judge found by a preponderance of the evidence that the defendant had committed a hate crime and sentenced him to an enhanced sentence under the New Jersey hate crime law. Id. Based upon the Due Process Clause, the Supreme Court held that the findings upon which defendant’s hate crime sentence was based must be proved to a jury beyond a reasonable doubt. Id. at 490. Specifically, the Supreme Court stated that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” Id.

In 2004, the Supreme Court expanded its decision in Apprendi through its ruling in Blakely v. Washington, --- U.S. ---, 124 S. Ct. 2531 (2004). In Blakely, the Supreme Court held that a sentence that was enhanced by the State of Washington's sentencing regime on the basis of factors found by the judge, rather than the jury, violated defendant's constitutional right to trial by jury. Blakely, --- U.S. at ---, 24 S. Ct. at 2533. Expanding the ruling in Apprendi, which was limited to sentences that exceeded the statutory maximum, the Supreme Court concluded that "the relevant statutory maximum is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings." Id., -- U.S. at ---, 24 S. Ct. at 2537. Notably, in its opinion the Supreme Court specifically reserved decision regarding the United States Sentencing Guidelines. Blakely, --- U.S. at ---, 124 S. Ct. at 2538 n.9.

On January 12, 2005, the Supreme Court reaffirmed its holding in Apprendi and extended Blakely's holding to the United States Sentencing Guidelines. Booker, --- U.S. at ---, 125 S. Ct. at 742. In Booker, the Supreme Court held that Booker's Sixth Amendment right to trial by jury was violated by the judge who increased his sentence based on a fact found by the judge by a preponderance of the evidence (rather than by the jury beyond a reasonable doubt). Id., --- U.S. at ---, 125 S. Ct. at 749. Specifically, the Court held that "we reaffirm our holding in Apprendi: Any fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt." Id., --- U.S. at ---, 125 S. Ct. at 756-57. Thus, "the Booker majority held that mandatory enhancement of a sentence under the Guidelines, based on facts found by the court alone, violates the Sixth Amendment." United States v. Davis, --- F.3d ---, 2005 WL 976941, at *1 (3d Cir. Apr. 28,

2005)(citation omitted). “To remedy this constitutional infirmity, the Court excised that provision of the statute making application of the Guidelines mandatory.” Id. (citation omitted). The Booker Court declared that “the Sentencing Guidelines were no longer mandatory, but merely advisory, and that the courts of appeals should review sentences for ‘reasonableness’ in light of the statutory sentencing factors identified in 18 U.S.C. § 3553(a).”² Breazeale v. United States, No. 05-567, 2005 WL 950618, at *2 (E.D. Pa. Apr. 21, 2005)(citation omitted).

Hall’s argument that he is entitled to a reduction in sentence under 18 U.S.C. § 3582 (c)(2) due to the holding in Booker fails. In United States v. Dorsey, the Honorable Juan R. Sanchez addressed identical issues to the ones presented here.³ Dorsey, No. 93-495, 2005 WL 906356, at *1-2 (E.D. Pa. Apr. 11, 2005). In Dorsey, Robert Dorsey (“Dorsey”) sought modification of his term of imprisonment based upon 18 U.S.C. § 3582 (c)(2) and the retroactive application of Booker. Id. at *1. Finding that the Sentencing Commission did not lower any sentencing range applicable to Dorsey, Judge Sanchez concluded that “[c]ontrary to Dorsey’s

² “The Supreme Court’s decision in United States v. Booker brought about sweeping changes in the realm of federal sentencing.” Davis, 2005 WL 976941, at *1 (citation omitted). “In the aftermath of Booker, the Federal Sentencing Guidelines once a mandatory regime circumscribing the discretion of district court judges are ‘effectively advisory.’” Id. (citation omitted). “Under the post- Booker sentencing framework, District Courts will consider the applicable advisory Guidelines range in addition to factors set forth in 18 U.S.C. § 3553(a).” Id. (citation omitted). “Booker is applicable to all cases on direct review.” Id. (citation omitted).

³ Another case addressing similar issues to the present action is United States v. Barnes, No. 95-349, 2005 WL 217027, at *1-2 (E.D. Pa. Jan. 28, 2005). In Barnes, a *pro se* petitioner brought his motion for a reduction of sentence pursuant to 18 U.S.C. § 3582 (c)(2). Id. The Court denied his motion because petitioner did not point to any reduction by the Sentencing Commission. Id. Regarding petitioner’s motion for a reduction of sentence under Booker, the Court treated the motion as a motion brought under 28 U.S.C. § 2255, and denied it without prejudice because petitioner was barred from filing a second or successive Section 2255 motion without authorization from the Third Circuit. Id.

contention, Booker does not support a 18 U.S.C. § 3582 (c)(2) claim that the Sentencing Commission has subsequently lowered the sentencing range for Dorsey’s crime.” Id. As for the issue of whether Booker applies retroactively on collateral review, Judge Sanchez examined judgments by the Courts of Appeals that ruled on the issue and concluded that a defendant may not raise the Booker holding on a petition for collateral review and may not apply Booker retroactively. Id. (citations omitted). As a result, Judge Sanchez found that Dorsey’s arguments for sentence modification by attempting “to apply Booker retroactively to his sentence and to incorporate the Booker holding into his 18 U.S.C. § 3582 (c)(2) claim” are without merit.⁴ Id. Likewise, I find that Hall’s attempt to incorporate the Booker holding into his 18 U.S.C. § 3582 (c)(2) motion is meritless.

An appropriate Order follows.

⁴ A decision by the Third Circuit that also addresses similar issues to the instant action is United States v. McBride, 283 F.3d 612 (3d Cir. 2002). In McBride, defendant sought a reduction in his sentence pursuant to 18 U.S.C. § 3582 (c)(2) based upon the following two grounds: (1) a retroactive amendment to the Sentencing Guidelines applicable to his sentence and (2) resentencing in accordance with Apprendi. McBride, 283 F.3d at 613-14. The Third Circuit affirmed the District Court’s Order granting the motion for reduction of sentence under 18 U.S.C. § 3582 (c)(2) based upon the retroactive application of an applicable amendment to the Sentencing Guidelines. Id. at 614-16. The Third Circuit also agreed with the District Court’s determination that even if Apprendi could be applied retroactively, it would not be applied at defendant’s resentencing because that resentencing was circumscribed by the nature of the motion before the Court, which was simply a motion under 18 U.S.C. §3582(c)(2) for a reduction of sentence based upon a change in the Guidelines. Id. at 614. The Third Circuit agreed with the District Court’s determination “that McBride’s Apprendi argument was independent of and unrelated to any change in the Guidelines and was, therefore, outside the scope of a sentence modification under § 3582.” Id. at 616. McBride is distinguishable from the present case because there was an applicable retroactive amendment to the Guidelines and the case addressed Apprendi. However, McBride presents a similar situation to the present action because Hall seeks the retroactive application of Booker through his Motion for a Reduction of Sentence under 18 U.S.C. §3582 (c)(2). According to the Third Circuit’s reasoning in McBride, Hall’s Booker argument is independent of and unrelated to any change in the Guidelines and is, therefore, outside the scope of a sentence modification under Section 3582.

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AMENDED ORDER

AND NOW, this 17th day of May, 2005, upon consideration of the Motion for a Reduction of Sentence Pursuant to 18 U.S.C. § 3582 (c)(2) filed by Thomas Hall (Doc. No. 162), and the Government's Response thereto, it is hereby **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

s/Robert F. Kelly
ROBERT F. KELLY, **Sr. J.**