

firearm count. As a part of the plea agreement, the court dismissed Count 6 of the superseding indictment, which charged Mitchell with a second count of possession of a firearm in furtherance of a drug trafficking offense. See 18 U.S.C. § 924(c). That count carried a 25-year consecutive mandatory minimum sentence.¹

The advisory sentence guideline range for all counts was 132 to 138 months with the inclusion of the mandatory ten-years minimum sentence for Count 3. However, the sentence imposed was significantly lower than the guideline range of 432-438 months which potentially could have applied had the Government not agreed to the dismissal of Count 6 of the superseding indictment as part of the plea agreement.

Mitchell seeks a reduction in his sentence under § 3582(c) (2) based on the subsequent action of the Sentencing Commission through Amendment 782 which lowered retroactively the advisory sentencing range applicable to his drug offenses.

Section 3582(c) (2) states in relevant part:

(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, . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to

1. On August 21, 2012, the court denied his motion under 28 U.S.C. § 2255.

the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

The Supreme Court held in Hughes v. United States, 138 S. Ct. 1765, 1776-77 (2018) that the district court has discretion to reduce a sentence under § 3582(c)(2) where a defendant has entered into an agreement with the Government and was sentenced to a specific term of imprisonment pursuant to Rule 11(c)(1)(C) as long as the Guidelines range, as it did here, played a part in the court's acceptance of the plea agreement and the sentencing.

The Government concedes that the court has discretion to reduce Mitchell's sentence under Amendment 782, which took effect in 2014 and generally reduces by two levels the offense levels heretofore applicable to specific quantities of illegal drugs. In this case, the applicable guideline range for Counts 1, 2, 4 and 5 is lowered from a total offense level of 13 (12 to 18 months) to a total offense level of 11 (8 to 14 months). Since Mitchell faced a ten-year mandatory minimum sentence on Count 3 charging possession of a firearm in furtherance of a drug trafficking offense under § 924(c)(1), the applicable sentencing range at the time of sentencing, as noted above, was 132 to 138 months. As a result of Amendment 782, the range is now 128 to 134 months.

The court has reviewed the facts underlying the guilty plea as well as the guilty plea agreement under Rule 11(c)(1)(C), the presentence report, and the sentencing memorandum of the Government.² Mitchell has also submitted with his present motion character letters and exhibits showing that he has passed his GED courses and has received several other certificates while in prison. We have taken into account all the relevant factors under 18 U.S.C. § 3553(a) as required by § 3582(c)(2).

The defendant under all the circumstances received a sentence which was significantly lower than what he faced if the Government had proceeded with and prevailed on Count 6. Aside from Count 6, he pleaded guilty to four serious drug crimes committed on two separate occasions and to possession of a firearm in furtherance of a drug trafficking offense. He was on bail when he committed the crimes on the second occasion. He also forfeited in this action no less than six firearms plus ammunition. By agreeing to a "C" plea, he avoided a possible additional 25-year mandatory consecutive sentence.

The court, in accepting the "C" plea, took into account the Guideline range applicable to his plea of guilty to two counts of possession with intent to distribute both crack

2. Defense counsel did not file a sentencing memorandum.

cocaine and to two counts of possession with intent to distribute heroin. Since that time, Amendment 782 to the Guidelines has reduced retroactively by two levels the offense levels for the total drug quantity in issue here and has treated crack cocaine somewhat less harshly than previously. Consistent with applicable policy statements of the Sentencing Commission and the four-month offense level reduction, the court will exercise its discretion to reduce Mitchell's sentence by four months on each of his concurrent terms of imprisonment on Counts 1, 2, 4 and 5. These sentences are each lowered from five years to four years and eight months. The mandatory minimum consecutive sentence of ten years on Count 3 is not subject to any reduction and remains in effect. Thus, Mitchell's total sentence is being reduced from 180 months to 176 months. While the court commends defendant for what he states to be significant positive changes in his life while incarcerated, no further reduction is warranted under § 3582(c)(2).

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

UNITED STATES OF AMERICA : CRIMINAL ACTION
 v. : :
 : :
TARIQ MITCHELL : NO. 10-146

ORDER

AND NOW, this 7th day of January, 2019, for the reasons set forth in the foregoing Memorandum, it is hereby ORDERED that:

(1) the motion of defendant Tariq Mitchell for a reduction in his sentence under 28 U.S.C. § 3582(c)(2) is GRANTED;

(2) the concurrent five-year sentences on each of Counts 1, 2, 4 and 5 are reduced to four years and eight months, with the mandatory minimum consecutive sentence of ten years on Count 3 remaining in effect, for a total sentence of imprisonment of 176 months; and

(3) all other terms of defendant's sentence remain unchanged.

BY THE COURT:

/s/ Harvey Bartle III
J.