

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

UNITED STATES OF AMERICA

v.

JORGE FIGUEROA

CRIMINAL ACTION

NO. 91-00518-1

**PAPPERT, J.**

**January 30, 2019**

**MEMORANDUM**

Jorge Figueroa seeks a reduction of his life sentence pursuant to 18 U.S.C. § 3582(c)(2). Figueroa bases his request on Amendment 782 to the United States Sentencing Guidelines, which retroactively reduced the offense levels assigned to certain drug offenses. A sentence reduction is not warranted and Figueroa’s Motion, even as capably supplemented by the Federal Community Defender Office, is denied.

I

In 1991, Figueroa pled guilty to a four count indictment charging him with conspiracy to import and distribute cocaine, importation of cocaine, aiding and abetting the importation of cocaine and interstate travel in aid of racketeering enterprises. *See United States v. Figueroa*, No. 91-518-1, 1996 WL 426690, at \*1 (E.D. Pa. July 29, 1996). Figueroa admitted to his efforts to “establish Philadelphia as a major port of

entry for cocaine of the Cali cartel of Colombia.”<sup>1</sup> *United States v. Figueroa*, No. 91-518-01, 1992 WL 301285, at \*3 (E.D. Pa. Oct. 14, 1992). After pleading guilty, Figueroa testified at the trial of two of his co-conspirators, reiterating the factual basis for his guilty plea and explaining that the initial cocaine shipment which led to his arrest was merely a “trial run” for larger shipments to come and that if it failed the Colombians would be “disappointed” and wouldn’t use him anymore. *Id.* at \*8.

At his sentencing, Figueroa attempted to withdraw his guilty plea claiming, among other things, that he was unaware of the nature and consequences of his plea, that he didn’t understand what was being presented to him during the plea colloquy and that his lawyer nudged his elbow to signal how he should answer the Court’s questions. *See id.* Judge Yohn denied Figueroa’s Motion, stating that “the defendant’s testimony is completely lacking in credibility. Indeed, rarely, if ever, has this court seen a witness who was more obviously lying than this defendant.” *Id.* at \*6.

Judge Yohn calculated Figueroa’s sentence using a base offense level of 38, to which two separate enhancements were added. *See United States v. Figueroa*, No. 91-518-1, 1996 WL 426690, at \*1 n.4 (E.D. Pa. July 29, 1996) (citing Sent. Trans. at 19–20, 22, 30). Figueroa received a 2 level enhancement for perjuring himself and an additional 4 levels because he was the leader of the drug trafficking conspiracy. *Id.* Because the maximum offense level was 43, his offense level was set there, rather than

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<sup>1</sup> The Cali Cartel was, at its height, the most powerful drug trafficking organization in the world and was responsible for much of the cocaine that was brought into the United States in the 1990s. *See* Press Release, United States Department of the Treasury, Treasury Lifts Sanctions on the Defunct Colombian Business Empire led by the Rodriguez Orejuela Family (June 19, 2014) <https://www.treasury.gov/press-center/press-releases/Pages/jl2436.aspx>; *see* UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, DEA-94086, THE CALI CARTEL: THE NEW KINGS OF COCAINE (1994), <https://www.ncjrs.gov/pdffiles1/Digitization/152436NCJRS.pdf>.

at 44. *Id.* This led to the imposition of a life sentence, which the Third Circuit Court of Appeals affirmed. *See United States v. Figueroa*, 8 F.3d 813 (3d. Cir. 1993).<sup>2</sup>

Figueroa's incarceration did not, however, hinder his drug trafficking career. From 2000 to 2005, Figueroa and his co-conspirators brought large quantities of cocaine from Colombia into the United States through a port in Brooklyn, New York. *See* Transcript at 7:24–25, 20:7–11, *United States v. Jorge Figueroa*, No. 04-515 (E.D.N.Y. Oct. 9, 2007), ECF No. 600. Figueroa pled guilty in 2007 to conspiracy to import more than five kilos of cocaine, *see* Judgment, *United States v. Jorge Figueroa*, No. 04-515 (E.D.N.Y. Dec. 7, 2018), ECF No. 429; indeed, he was determined to be responsible for 150 kilograms and on March 7, 2008 was sentenced to 324 months imprisonment, to run concurrent with his life sentence for the 1991 conviction.<sup>3</sup> *See id.*; *see* Transcript at 16:14–16, *United States v. Jorge Figueroa*, No. 04-515 (E.D.N.Y. Oct. 9, 2007), ECF No. 600.

On October 26, 2017, Figueroa filed his Motion *pro se*. *See* (Mot. Red., ECF No. 64). The government responded to Figueroa's Motion on February 28, 2018, *see* (Resp. Opp'n Mot. Red., ECF No. 68), and Figueroa replied on March 15, 2018. *See* (Reply Sup. Mot. Red., ECF No. 69). The Federal Community Defender Office filed a Supplemental Memorandum on Figueroa's behalf on September 13, 2018. *See* (Notice,

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<sup>2</sup> In 1996, Figueroa filed a motion pursuant to 18 U.S.C. § 3582(c)(2) for a reduction in his sentence based on amendment 505 to the United States Sentencing Guidelines. The court denied the motion, finding that the amendment did not change Figueroa's base offense level. *United States v. Figueroa*, No. 91-518-1, 1996 WL 426690, at \*1 (E.D. Pa. July 29, 1996).

<sup>3</sup> On November 29, 2018, the district court for the Eastern District of New York reduced Figueroa's concurrent sentence from 324 months to 262 months after, as here, Figueroa moved for a reduction of his sentence pursuant to amendment 782. Order, *United States v. Jorge Figueroa*, No. 04-515 (E.D.N.Y. Dec. 7, 2018), ECF No. 608.

ECF No. 71; Supp. Mem. Red., ECF No. 72). The government responded to that Memorandum on November 30, 2018. *See* (Resp. Opp'n Supp. Mem. Red., ECF No. 75).

In its initial response, the government took the position that a reduction in Figueroa's sentence was not warranted in light of his "serious post-conviction criminal conduct"—the five year drug trafficking conspiracy. (Resp. Opp'n Mot. Red. 1.) To the government, Figueroa's ability to pull off a crime of this magnitude showed that he "maintain[ed] significant contacts in the cartel community" and presented a serious risk of resuming his drug trafficking activities—despite his eventual deportation to Colombia—when released from jail. (*Id.* at 6–7.) While the Defender Office's Supplemental Memorandum certainly puts some finer points on Figueroa's initial effort, it provides in the Court's view no reason to reduce Figueroa's sentence. Nonetheless, the government now hedges, saying that while it leaves the decision to the Court's discretion, it would not object to a reduction to the "lower end" of the 360 months to life guideline range. (Resp. Opp'n Supp. Mem. Red. 2.) The government had it right the first time.

## II

Generally, a federal court "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. § 3582(c); *see also Dillon v. United States*, 560 U.S. 817, 819 (2010). However, a court "may reduce the term of imprisonment" for a defendant "sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." 18 U.S.C. § 3582(c)(2).

A court considering a Section 3582(c)(2) motion must apply the two-step inquiry set forth in *Dillon*. It must determine, as an initial matter, whether the defendant is

eligible for sentence modification. *Id.* at 826–27. If so, the court must then consider any applicable factors under 18 U.S.C. § 3553(a) and determine whether, in its discretion, a reduction in the defendant’s sentence is “warranted in whole or in part under the particular circumstances of the case.” *Id.* at 827.

Whether a court decides to hold a hearing for a § 3582(c)(2) motion is a matter of discretion. *See United States v. Styer*, 573 F.3d 151, 154 (3d Cir. 2009) (citing *United States v. Tidwell*, 178 F.3d 946, 949 (7th Cir. 1999)). Because proceedings under 18 U.S.C. § 3582(c)(2) do not constitute a full resentencing of the defendant, *see* U.S.S.G. § 1B1.10(a)(3), Figueroa is not entitled to an evidentiary hearing on his § 3582(c)(2) motion. *See id.*; *see also* Fed. R. Crim. P. 43(b)(4) (“A defendant need not be present” when “[t]he proceeding involves the correction or reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c)”). The Court has reviewed thoroughly the available underlying record as well as the motions and briefing, and all materials and letters attached thereto. An evidentiary hearing is neither warranted nor necessary in this case.

#### A

For a defendant to be eligible for a reduction, the amendment must have “the effect of lowering the defendant’s applicable guideline range.” *See United States v. Flemming*, 723 F.3d 407, 410 (3d Cir. 2013). The Court thus must determine the amended guideline range that would have been applicable if Amendment 782 had been in effect when the defendant was sentenced.

If Amendment 782 had been in effect at the time of Figueroa’s sentencing, his base offense level would have been 36 and the total offense level would have been 42 after the enhancements for perjury and leadership in the drug trafficking conspiracy.

*See* U.S.S.G. 2D1.1(c)(2). With an offense level of 42 and criminal history category III, *see* (Mot. Red. 4), the guideline range would have been 360 months to life in prison. Because Amendment 782 reduces Figueroa’s sentencing guideline range, he is eligible, in the Court’s discretion, for a reduction of his current life sentence.

## B

The Court next decides whether a reduction is warranted. *See Dillon*, 560 U.S. at 827. In determining whether to modify a defendant’s sentence, the Court must consider the factors in 18 U.S.C. § 3553(a) “to the extent that they are applicable.” *Id.* at 826–827. Pursuant to § 3553(a), the Court must consider, among other things, the nature and circumstances of the offense, the history and characteristics of the defendant and the need for the sentence imposed to afford adequate deterrence to criminal conduct and protect the public from future crimes of the defendant. *See* 18 U.S.C. § 3553(a)(1–2). The Court may also consider post-sentencing conduct in determining whether a reduction is warranted. *See* U.S.S.G. § 1B1.10. The § 3553(a) factors are supplemented by public safety concerns posed by a reduction of the defendant’s sentence. *Styer*, 573 F.3d at 155.

## i

The nature and circumstances of Figueroa’s offense were heinous. His “mission” was to establish the City of Philadelphia as a major port of entry into the United States for the massive amounts of cocaine pushed into the country by the infamous Cali Cartel. In his Motion, Figueroa recognizes the “calamitous consequences” and “utter devastation” of what he terms the “cocaine epidemic in America” and again admits his responsibility for importing or attempting to import large quantities of the drug into

the country. *See* (Mot. Red. 8). He was found to be a leader in the conspiracy to “open up” Philadelphia to the Colombian producers and distributors. While he was sentenced on the basis of the 244 kilos of cocaine that were imported and seized upon his arrest, the goal of the conspiracy was to import into America through Philadelphia more than 3000 kilos. *See United States v. Figueroa*, No. 91-518-01, 1992 WL 301285, at \*5 (E.D. Pa. Oct. 14, 1992). Both Figueroa’s role in the conspiracy and the conspiracy itself weigh against a reduction in Figueroa’s sentence.

ii

Figueroa’s history and characteristics do not augur well for his Motion’s chances and his post-conviction conduct effectively precludes him from obtaining the relief he seeks. Figueroa is currently 58 years old and has been in prison for 27 years. While serving the very sentence he now asks the Court to reduce, Figueroa committed another very serious drug trafficking offense. Not until page 11 of his Motion (and only after two pages of touting his status as a model inmate) does Figueroa mention that he was again convicted of conspiring to import 150 kilos of cocaine into the United States through a port in New York. This was a five-year course of conduct for which he received another significant prison term, concurrent to his life sentence for the crimes in this case. *See* Transcript at 7:24–25, 16:14–16, *United States v. Jorge Figueroa*, No. 04-515 (E.D.N.Y. Oct. 9, 2007), ECF No. 600; Judgment, *United States v. Jorge Figueroa*, No. 04-515 (E.D.N.Y. Dec. 7, 2018), ECF No. 429.

The Court has reviewed and considered all of Figueroa’s post-conviction conduct. While in prison, Figueroa has been employed in food services, as an orderly, a Spanish teacher and a yoga instructor. *See* (Mot. Red. 11). He has taken courses in various

subjects and obtained a number of certifications. *See* (Mot. Red Ex. B, ECF No. 64-1). Figueroa’s case manager provided a letter to the Court, stating that “Jorge Figueroa is the best inmate I’ve supervised in almost thirteen years in corrections.” *See* (Mot. Red. Ex. 1). The Court cannot, however, look past Figueroa’s subsequent conviction while incarcerated; it outweighs his positive accomplishments in prison.

iii

In his Supplemental Memorandum, Figueroa argues that if released he “will pose no risk of recidivism, danger to the public, or further cost to the United States.” *See* (Supp. Mem. Red. at 1). The Court cannot so conclude. Figueroa’s efforts to convince the Court that he is a changed man who if released will live a law abiding life, whether in Colombia or elsewhere, are undermined by a number of his fatuous statements. After admitting the obvious—that his crimes contributed to the devastation of America’s cocaine epidemic—Figueroa asks the Court to consider that he was “lured” into drug dealing by the “promises of wealth and success in this country.” (Mot. Red. 7–8.) Figueroa explains that he didn’t create the demand for cocaine—he “simply took advantage of an opportunity to supply it and make a profit.” (*Id.* at 8.) Indeed, all he did was supply cocaine “to adults who demanded it.” (*Id.* at 8–9.)

The trafficking conspiracy conducted from prison has its own justification, though again grounded in unadulterated greed. This crime Figueroa purports to “explain” as a result of depression from a thyroid cancer diagnosis, a look at his own mortality, and an “opportunity to make some quick money” to make sure his mother “would be well taken care of” in the event of his premature demise. (*Id.* at 11–12.) He regrets his “tremendous error in judgment” in pursuing this “get rich quick scheme”

which of course had been presented to him by an “old associate” from his criminal past in the drug trade who needed Figueroa’s help contacting his “remaining connections” in Colombia. (*Id.* at 11.) Again, all Figueroa wanted was to become “rich and successful”. (*Id.* at 12.)

Despite all of his “unfortunate involvement in the distribution of cocaine for financial gain”, Figueroa purports to assure the Court that he is a person of “sound character grounded in both moral and ethical strength.” (*Id.* at 11–14.) The Court cannot find under the particular circumstances of these cases that Figueroa poses no risk of recidivism. There is instead a far stronger argument that he remains a danger to society.

Figueroa repeatedly reminds the Court that “no weapons or violence” were involved in his criminal activity. His mother, sister, brother, aunts and cousin stress this point as well in their letters, each characterizing his crime the exact same way—as a “non-violent drug offense.” *See* (Supp. Mem. Red. Ex. A). However, drug trafficking conspiracies of this magnitude are inherently dangerous to society. *See, e.g., United States v. Gibson*, 481 F. Supp. 2d 419, 422 (W.D. Pa. 2007) (citing *United States v. Perry*, 788 F.2d 100, 111 (3d Cir. 1986)); *United States v. Garcia-Velazco*, 356 F. App’x 571, 574 (3d Cir. 2009); *United States v. Strong*, 775 F.2d 504, 507 (3d Cir. 1985). His and his family’s efforts to downplay the severity of the crime notwithstanding, Figueroa’s role in an extremely serious drug trafficking conspiracy and his audacity in engaging in similar conduct while incarcerated compel his Motion’s denial.

An appropriate order follows.

BY THE COURT:

*/s/ Gerald J. Pappert*  
GERALD J. PAPPERT, J.