



USA v. Roberson

2020 | Cited 0 times | W.D. Virginia | February 24, 2020

OFFICE U S DISTRICT COURT cœ RK' s

FILED FEB 24 2022 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA uuu xc uDuR, cu RK

HARRISONBURG DIVISION BY : g. u UNITED STATES of Am m cà

Case No. 5: 14-CR-0020

DEAN m EN ROBERSON ,

Defendant

By: Michael F. Utbansl d Chi ef Uni t ed St ates Di st r ict Judge G M ORAN DUM OPINION Dean Allen Rober son, represent ed by counsel , seeks a reduct i on i n hi s sent ence pt usuant t o Hu hes v. Uni t ed St at es, 138 S. Ct . 1765 (2018) . ECF No. 37. He ass ert s t hat he i s ent i t led t o a reduct i on of l l i s sent ence f r om 180 mont hs t o 130 mont hs. The government agrees t hat Robers on i s enét led t o r el i ef under Hu hes, but at gues ' t hat hi s sent ence s hot l l d be d d to 155 months. ECF No. 39. For the zeasons set fort h bel ow, t he court GRANTS te uce Roberson's mot i on for rel i ef and REDUCES l l i s sentence t o 155 months.

1. On Ma y 21, 2014, Robetson entet ed i nt o a pl ea areement pms uant t o Fedetal Rul e of Cr i mi nal Procdt ue 11(c)(1)(C) where he pl eaded 51 . 1 1 1 t o one count of cons pi r i ng t o di st dbut e and pos sess wi t h i nt ent t o di st r i but e 50 grnms or more of met hamphet ami ne (act a z al), i n vi ol at i on of 21 U. S. C. jj 846 and 841\$) (1)(A). Thi s count car r i ed a mi ni ml l m stamtory penal ty of a lo- year te= of i mprisonment. ECF No. 18. Robetson also pl eaded g1 41 1 t o one count of di st r i but i on of hezoi n, i n vi ol at i on of 21 U. S. C. jj 846 and 841\$4 1) . As patt of the pl ea agteement , t he government wi thdtew an informati on i t had ft l ed pursuant t o 21 U. S. C. j 851 s ubj ect i ng Robetson t o an i ncreased penal ty f or a pri or f el ony dr ug

convi ct i on. J . i The patt i es agreed t hat an appt opt i at e sent ence woul d be bet ween 180 mont hs (15 years) and 204 mont hs (17 yeat s). Roberson ent ered a gui l ty pl ea t he same day. ECF Nos. 15, 19. On Augus t 27, 2014, Robers on was sent enced t o a t er m of 180 mont hs t o be f ol l owed by a s-yeat tet ' m of supervi sed zel ease. ECF Nos. 27, 29.



USA v. Roberson

2020 | Cited 0 times | W.D. Virginia | February 24, 2020

II. Roberson asserts that he is entitled to the relief afforded by Hughes to defendants who entered plea agreements pursuant to Rule 11(c)(1)(C). Hughes held that defendants who were sentenced pursuant to a Rule 11(c)(1)(C) agreement are eligible for a sentence reduction based on Amendment 782 to the Sentencing Guidelines range if that range were part of the frame work that he is strictly controlled on in imposing the sentence. Hughes, 138 S. Ct. at 1175. The government agrees that Roberson is entitled to relief under Hughes.

The parties disagree about the number of months by which Roberson's sentence should be reduced. Pursuant to the guidelines in effect when Roberson was sentenced, Roberson's base offense level was 32 based on at least 50 but less than 150 grams of methamphetamine (actual). He received a 3-point decrease for acceptance of responsibility for a total offense level of 29. His total offense level coupled with his criminal history category of VI resulted in a sentencing range of 151-188 months. ECF No. 31-62. Under the amended guidelines, Roberson's base offense level based on drug weight would be 30 and his total offense level would be 27, which, with his criminal history category of VI, would give him a guidelines range of 130 to 162 months.

Roberson's original sentence of 180 months was at the high end of the guidelines. A proposed sentence under the new guidelines would be 155 months and the government argues that such a sentence would be appropriate.

Roberson asserts that under United States Sentencing Guidelines § 1B1.10, the court could reduce his sentence to the bottom of the guideline range, or 130 months, and argues that 130 months would be an appropriate sentence. First, he points out that the First Step Act changed the enhanced penalties for defendants with a prior felony criminal offense. Had Roberson been sentenced without a plea agreement, he would have received a 20-year mandatory sentence based on his prior felony drug offense. 21 U.S.C. § 841(a)(1)(A) (2014). The mandatory sentence for a § 851 enhancement has been decreased to 15 years. 21 U.S.C. § 841(a)(1)(A) (2018). Roberson contends that the sentence that was assessed was 60 months lower than the mandatory minimum sentence of 20 years he would have faced absent the plea agreement, and that a similar adjustment based on the current 15-year enhancement would be 120 months. Recognizing that the court cannot reduce Roberson's sentence below the guidelines range of 130 months, he suggests that 130 months would be an appropriate

C sentence.

Roberson offers no authority to support his claim that the court can consider changes brought about by the First Step Act when contemplating a sentence reduction under Hughes. Only one case was found addressing a similar argument and the district court rejected it. See United States v. Lizarzabaras-Chacon, No. 3:11-cr-00517-HZ, 2020 WL 137455 (17. Or. 2020) a case docketed, No. 20-30001 (9th Cir. Jan. 14, 2020). The district court noted that the defendant's



USA v. Roberson

2020 | Cited 0 times | W.D. Virginia | February 24, 2020

arguing the current state of the law surrounding a mandatory

minimum, to which he was not sentenced, challenged an aspect of a sentence not affected by the change to the guideline range and that Amendment 782 did not retroactively amend the minimum in place when he was sentenced. *Li*, 2020 W. L. 137455 at *3. The court further noted that to the extent the defendant was arguing that changes to the relevant mandatory minimum under U -

at *United States v. Valenciar Mendoza*, 912 F. 3d 1215 (9th Cir. 2019), and the First Step Act of 2018 changed the analysis of the § 3553(a) factors, he had failed to explain how changes to a mandatory minimum might fit into the § 3553(a) framework. The court found that 18 U. S. C. § 3553(a)(4)(A) was the most relevant factor but it does not appear to contemplate changes to a mandatory minimum by act of Congress or resulting from the courts. *Lizarras-Chacon*, 2020 WL 137445 at *3-4.

Roberson was not subject to the mandatory 20-year sentence because the government withdrew the enhancement as part of the plea agreement. In the absence of authority providing for consideration of the change to the mandatory minimum sentence in the context of a guideline adjustment under Rules, the court declines to base a sentence reduction on the change.

Roberson next asserts that the court should consider that his guidelines were based on actual methamphetamine and not a mixture, and that his court previously has disagreed with the Sentencing Commission's actual methamphetamine guidelines on numerous grounds. See *United States v. Moreno*, 5:19-CR-2, 2019 WL 3557889 (W.D. Va. 2019), a *de novo* review.

In *Valenciar Mendoza*, the Ninth Circuit Court of Appeals found that an increase to a defendant's offense level based on a Washington state conviction for possession of cocaine that was purchased by the defendant for a fee exceeding one year was erroneous. Although the prior conviction carried a general statutory maximum term of imprisonment of five years, the state prescribed a binding sentencing range, under which the actual maximum term of imprisonment the defendant could have received was six months, and thus the state conviction was not a felony for purposes of the Sentencing Guidelines.

dismissed, No. 19-4608 (4th Cir. Sept. 4, 2019). Roberson argues that his plea agreement was made in the shadow of the Commission's guidelines and that a reduction to the bottom of the actual methamphetamine guideline range, 130 months, is warranted, because the guideline range for a methamphetamine mixture weight of 50 to 150 grams would be only 77 to 96 months.

Roberson offers no authority under which the court can consider a policy argument with regard to punishment for actual methamphetamine versus a mixture of methamphetamine in the context



USA v. Roberson

2020 | Cited 0 times | W.D. Virginia | February 24, 2020

of a Hughes sentence reduction. While it is true that in *Moreno*, the court varied downward in part based on a categorical policy disagreement with the methamphetamine guidelines, the procedural posture was different in that *Moreno* had not yet been sentenced. Roberson was found guilty and his sentence was imposed in 2014.

In *Dillon v. United States*, 560 U. S. 817, 831 (2010), the Supreme Court instructed that proceedings under 18 U. S. C. § 3582(b)(2) are limited in scope and purpose and the sentence was not ended to authorize only a limited adjustment to another wise final sentence and not a planetary sentencing proceeding. *Id.*, 560 U. S. at 826-827. Section 1B1.10 of the Sentencing Guidelines provides that a new sentence may be imposed only where application of the retroactive amendment would result in a lower Guidelines range, following all other guideline application decisions unaffected. *Dillon*, 560 U. S. at 821 (quoting U. S. S. G. § 1B1.10(b)(1)). When it has been determined that a defendant is eligible for a sentence reduction, a court may consider any applicable factors under § 3553(a). *Dillon*, 560 U. S. at 827; 18 U. S. C. § 3582(c)(2). However, § 3553(a) does not serve to limit the proceedings under § 3582(c)(2) in planetary sentencing proceedings. Ldx

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Roberson does not explain how § 3582(b)(2) or 3553(a) authorize the court to reconsider its 2014 determination that the actual methamphetamine guideline offense applied in this case. Without authority indicating that it is proper to do so, the court cannot reconsider its earlier reliance on the actual methamphetamine guideline. Rather, the court is limited to consider at issue of the Amendment 782 guideline change and any applicable § 3553(a) factors.

Roberson next asks the court, in considering the § 3553(a) sentencing factors, to consider that his criminal history category of VI overstates his criminal history. However, at the sentencing hearing there was no objection to the Presentencing Report, which assessed his criminal history category as VI, and the court adopted it. ECF No. 27. Roberson has not offered the court any reason to change its initial assessment of his criminal history.

Finally, Roberson asks the court to consider the fact that thirty-four percent of defendants convicted of methamphetamine trafficking (who did not otherwise receive below-guideline sentences due to substantial assistance) received below-guideline sentences during the 2018 fiscal year. However, without reference to the data for the year in which Roberson was convicted, the court finds this information to be of limited value.

Moreover, the court finds that Roberson's written guideline sentence accurately reflects the serious nature of his offense. The record shows that after Roberson's initial arrest, he was cooperative and appeared to be working toward a substantial assistance motion. However,



USA v. Roberson

2020 | Cited 0 times | W.D. Virginia | February 24, 2020

during the same time period, he once again started distributing drugs, and sold heroin to a woman who overdosed and nearly died. The plea agreement took into account both his cooperation and his subsequent, nearly-fatal drug trafficking. ECF No. 25. In addition, in his Sentencing Memorandum, Roberson asked the court to accept the plea

agreement and impose a sentence of 180 months, commenting that although the sentence was long, it struck a fair balance between the more extreme possibilities he avoided by entering into the agreement, and the consideration he should receive for his assistance to law enforcement. ECF No. 26 at 4.

Based on the foregoing, the court finds that Roberson is entitled to a reduction of his sentence to 155 months based on the holding in *Hughes*. An additional reduction is not justified based on the facts of this case. A sentence of 155 months takes into account the 18 U. S. C. § 3553(a) factors, including the nature and characteristics of the offense and the need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence to criminal conduct, and protect the public.

For the reasons stated, the court GRANTS Roberson's motion for a sentence reduction pursuant to *Hughes*. ECF No. 37. Roberson's sentence is reduced from 180 months to 155 months. The Clerk is directed to send a copy of this order to the petitioner, his counsel of record, and the United States.

An appropriate order will be entered. It is so ORDERED.

Entered; 02/24/2020 - p. 0. 2-0

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