

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-13499
Non-Argument Calendar

D.C. Docket No. 0:11-cr-60054-KMM-2

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARTHUR MURPHY,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(February 3, 2016)

Before HULL, MARTIN and ANDERSON, Circuit Judges.

PER CURIAM:

Arthur Murphy, a federal prisoner, appeals pro se the district court's denial of his 28 U.S.C. § 3582(c)(2) motion to reduce his sentence. The district court determined that Murphy was eligible for a sentence reduction, but denied his motion in light of the 18 U.S.C. § 3553(a) factors. After review, we affirm.

In considering a motion for a sentence reduction under § 3582(c)(2), the district court engages in a two-step process. United States v. Bravo, 203 F.3d 778, 780 (11th Cir. 2000). First, the district court “must recalculate the sentence under the amended guidelines” by substituting the new offense level and using it to determine the new guidelines range. Id. Second, if the defendant's amended guidelines range is lower, the district court must decide, in light of the 18 U.S.C. § 3553(a) factors and in its discretion, whether it will impose a new sentence within the amended guidelines range or retain the original sentence. Id. at 781.¹

Here, Murphy is serving a 144-month sentence for conspiracy to possess with intent to distribute five kilograms or more of cocaine . The parties agree that Murphy was eligible for a § 3582(c)(2) sentence reduction based on Amendment 782, which lowered by two levels the offense levels for most drug offenses in

¹The § 3553(a) factors include: (1) the nature and circumstances of the offense and history and characteristics of the defendant; (2) the need for the sentence to reflect the seriousness of the offense, (3) the need to promote respect for the law and afford adequate deterrence; (4) the need to protect the public; (5) the need to provide the defendant with education or vocational training and medical care; (6) the kinds of sentences available; (7) the guidelines range; (8) the pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwarranted sentencing disparities; and (10) the need to provide restitution to victims. 18 U.S.C. § 3553(a)(1)-(7).

U.S.S.G. § 2D1.1(c). See U.S.S.G. app. C, amend 782. Therefore, the only question on appeal is whether the district court abused its discretion in denying a reduction to Murphy. See United States v. James, 548 F.3d 983, 984 n.1 (11th Cir. 2008) (“Once it is established that 18 U.S.C. § 3582 applies, a district court decision to grant or deny a sentence reduction is reviewed only for abuse of discretion.”).

The district court determined that a sentence reduction was not warranted in Murphy’s case because of the violent nature of his offense, which involved a plan to rob a guarded stash house of ten kilograms of cocaine. In particular, the district court noted that: (1) while planning a stash house robbery, Defendant Murphy “spoke openly about his willingness to kill any guards at the stash house”; (2) Murphy then “brought weapons to accomplish this task,” and “embraced the dangerous nature of the home invasion robbery; and (3) when law enforcement intervened just before the robbery was to occur, one of Murphy’s co-conspirators “was killed by a SWAT officer after reaching for a gun in his waistband instead of following a lawful command to surrender.” Based on these facts, the district court concluded that Murphy’s sentence should remain unchanged.

Murphy argues that his conduct did not cause the death of his co-conspirator. Regardless, the district court was required to consider the nature and circumstances of Murphy’s offense under § 3553(a) in determining whether to reduce his

sentence. See U.S.S.G. § 1B1.10 cmt. n.1(B)(i) (providing that the district court “shall consider” the § 3553(a) sentencing factors). As such, the district court properly considered the violent nature of the planned stash house robbery, Murphy’s willingness to kill to accomplish this goal, and the fact that one of his accomplices was killed by a law enforcement officer during their arrests. See 18 U.S.C. § 3553(a)(1).

Murphy also contends the district court failed to consider his efforts to rehabilitate himself since being incarcerated. The district court was not required to consider Murphy’s post-sentencing rehabilitation efforts. See U.S.S.G. § 1B1.10 cmt. n.1(B)(iii) (providing that the district court “may consider post-sentencing conduct”). Furthermore, the fact that the district court did not explicitly address Murphy’s rehabilitation does not mean that the district court did not consider it. See United States v. Amedeo, 487 F.3d 823, 833 (11th Cir. 2007).

Given the violent circumstances surrounding Murphy’s cocaine conspiracy, we cannot say the district court abused its discretion in denying his request for a sentence reduction.

AFFIRMED.