[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 15-13611
Non-Argument Calendar

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D.C. Docket No. 1:02-cr-00116-CG-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GERALD EUGENE BENNETT,
a.k.a. Woody,

Defendant-Appellant.

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

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(March 23, 2016)

Before MARTIN, ROSENBAUM, and ANDERSON, Circuit Judges.

PER CURIAM:

Gerald Bennett, a *pro se* federal prisoner, is currently serving a sentence of imprisonment following convictions for drug trafficking, unlawful firearms possession, and attempted murder of a person assisting a federal officer. This appeal concerns Bennett's motion to reduce his sentence under 18 U.S.C. § 3582(c)(2) based on Amendment 782 to the United States Sentencing Guidelines. The district court granted Bennett's § 3582(c)(2) motion and reduced his sentence by 31 months. On appeal, Bennett argues that the district court procedurally erred when applying U.S.S.G. § 3D1.4 to recalculate his amended offense level and guideline range, and abused its discretion by failing to discuss the application of the 18 U.S.C. § 3553(a) sentencing factors. After careful review, we affirm.

**I.**

Bennett's convictions in this case arose out of his operation of a methamphetamine laboratory out of his residence. When officers forced entry into Bennett's house to execute a search warrant, Bennett shot and wounded the first officer to enter. Bennett and two other individuals then surrendered. During the subsequent search of the house, officers found various materials used for methamphetamine production and packaging, as well as a short-barrel shotgun and the handgun fired by Bennett.

A federal grand jury indicted Bennett on the following eight counts: conspiracy to possess with intent to distribute methamphetamine (Count 1);

attempt to manufacture methamphetamine (Count 2); possession with intent to distribute methamphetamine (Count 3); use of a firearm in furtherance of a drug-trafficking crime (Count 4); attempting to kill an official in the performance of official duties (Count 5); possession of a firearm as a convicted felon (Count 6); possession of a firearm as a drug user or addict (Count 7); and possession of an unregistered firearm (Count 8). A jury returned a guilty verdict on all eight counts.

Before sentencing, a probation officer prepared a presentence investigation report ("PSR") using the 2002 Guidelines Manual. Counts 1-3 and 6-8 ("Group 1") were grouped together for guidelines purposes, pursuant to U.S.S.G. § 3D1.2. The guideline range for Count 5 ("Group 2") was calculated separately because, according to the PSR, it was a crime of violence and reflected a distinct harm from the remaining counts. Count 4 was excluded from guideline calculations because it carried a statutory mandatory consecutive sentence of ten years' imprisonment.

For Group 1, Bennett's base offense level was 30, derived from a drug quantity of 403.8 grams of methamphetamine. *See* U.S.S.G. § 2D1.1(c)(5) (2002). Additional enhancements raised his offense level for Group 1 to 36. For Group 2, Bennett's base offense level was 28, U.S.S.G. § 2A2.1, which, after additional enhancements, became level 35.

The PSR then determined a combined offense level of 38 using the adjustment rules of U.S.S.G. § 3D1.4. Because Bennett had two groups of

offenses of similar severity, the PSR added an additional two levels to the higher offense level of the two groups, which was 36 (for Group 1), yielding a total adjusted offense level of 38. *See* U.S.S.G. § 3D1.4 (2002). With an offense level of 38 and a criminal history category of I, Bennett's combined guideline range was 235 to 293 months of imprisonment.

In February 2003, the district court sentenced Bennett to a total term of 408 months in prison. This sentence consisted of 288 months each for Counts 1 and 2, 240 months each for Counts 3 and 5, and 120 months each for Counts 6, 7, and 8, all to run concurrently, and 120 months for Count 4, to run consecutively to all other counts.[1] We affirmed Bennett's convictions and total sentence. *United States v. Bennett*, 368 F.3d 1343 (11th Cir. 2004), *vacated*, 543 U.S. 1110 (2005), *prior opinion reinstated on remand*, 131 F. App'x 657 (11th Cir. 2005).

In March 2015, Bennett filed *pro se* the present motion for a sentence reduction, asserting that the district court had the authority to reduce his sentence under § 3582(c)(2) based on Amendment 782 to the Sentencing Guidelines. Amendment 782 reduced the base offense levels for most drug-trafficking offenses by amending the drug-quantity table in § 2D1.1(c). Amendment 782 was made retroactive in November 2014. In support of his § 3582(c)(2) motion, Bennett submitted extensive documentation of his rehabilitation efforts while incarcerated.

[1] The sentences for Counts 3, 5, 6, 7, and 8, appear to have been reduced to account for their respective statutory maximum penalties.

This documentation showed that Bennett had, among other things, completed his high-school equivalency diploma in 2005, taken numerous education classes, particularly in the area of business management, and earned a variety of certificates for completing coursework and programs on bible study, drug treatment, and various skills and crafts.

In response to Bennett's § 3582(c)(2) motion, the district court issued an order announcing its intention to reduce Bennett's sentence and asking for responses from the parties. The court found that Bennett's new guideline range was 210 to 262 months. In a footnote, the court explained how that range was calculated, based on a recalculation provided by a probation officer:

> After recalculation of the guidelines, the total adjusted offense level on counts 1-3 and 6-8 (count group 1) is 34. The adjusted offense level for count 5 (count group 2) remains unchanged at 35. One unit point is assigned to each count group (pursuant to U.S.S.G. § 3D1.4), and is added to the greater adjusted offense level (which in this case is now count 5, with an offense level of 35). The result is a total offense level of 37.

The court stated that a comparable sentence in the reduced range would be 257 months. Bennett objected that the court incorrectly applied § 3D1.4 with regard to Count 5. He asserted that his amended total offense level should have been 36, for an amended guideline range of 188 to 235 months.

On July 29, 2015, the district court issued an order granting Bennett's motion for a sentence reduction and reducing his eligible sentence to 257 months

in prison, for a new total sentence of 377 months. The court noted Bennett's objections but found that the guideline range had been correctly recalculated. Bennett now appeals.

**II.**

We review a district court's decision whether to reduce a sentence under 18 U.S.C. § 3582(c)(2) for an abuse of discretion. *United States v. Jules*, 595 F.3d 1239, 1241-42 (11th Cir. 2010). A district court abuses its discretion by failing to apply the proper legal standard or to follow proper procedures when making a determination under § 3582(c)(2). *Id.* We hold *pro se* pleadings to a less stringent standard than pleadings drafted by attorneys and will, therefore, liberally construe them. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

**III.**

Bennett contends that the district court abused its discretion in reducing his eligible sentence to 257 months of imprisonment. Construing his brief liberally, Bennett argues that the court procedurally erred in two respects: (1) changing the number of "units" counted when reapplying U.S.S.G. § 3D1.4; and (2) adding the additional level increase specified in § 3D1.4 to Group 2 (Count 5) instead of Group 1 (Counts 1-3 and 6-8). Additionally, Bennett contends that the district court abused its discretion by failing to indicate whether and how the 18 U.S.C. § 3553(a) sentencing factors were considered in resentencing him.

A district court may modify a defendant's term of imprisonment if the defendant was sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). In considering a § 3582(c)(2) motion, a district court must engage in a two-part analysis. *United States v. Bravo*, 203 F.3d 778, 780 (11th Cir. 2000); *see also Dillon v. United States*, 560 U.S. 817, 826-27, 130 S. Ct. 2683, 2691-92 (2010).

First, the court must recalculate the applicable guideline range by substituting only the amended guideline for the one originally used. *Bravo*, 203 F.3d at 780; *see* U.S.S.G. § 1B1.10(b)(1). "All other guideline application decisions made during the original sentencing remain intact." *United States v. Vautier*, 144 F.3d 756, 760 (11th Cir. 1998); [U.S.S.G. []]. The overarching purpose of § 3582(c)(2) is to "give[] the defendant an opportunity to receive the same sentence he would have received if the guidelines that applied at the time of his sentencing had been the same as the guidelines that applied after the amendment." *United States v. Glover*, 686 F.3d 1203, 1206 (11th Cir. 2012). In other words, the "goal is to treat a defendant sentenced before the amendment the same as those sentenced after the amendment." *Id.*

Second, if a defendant is eligible for a sentence reduction, the district court must decide whether to exercise its discretion to reduce the defendant's original sentence. *Bravo*, 203 F.3d at 781. In evaluating whether and to what extent a

sentence reduction is warranted, the court "must consider the sentencing factors listed in 18 U.S.C. § 3553(a), as well as public safety considerations, and may consider the defendant's post-sentencing conduct."[2] *United States v. Williams*, 557 F.3d 1254, 1256 (11th Cir. 2009); *see* 18 U.S.C. § 3582(c)(2); U.S.S.G. § 1B1.10 cmt. n.1(B). The district court is not required to discuss each § 3553(a) factor as long as the record as a whole demonstrates that the pertinent factors were taken into account. *Williams*, 557 F.3d at 1256; *see also United States v. Eggersdorf*, 126 F.3d 1318, 1322 (11th Cir. 1997).

Here, the district court did not procedurally err in recalculating Bennett's amended guideline range, pursuant to U.S.S.G. § 3D1.4. Section § 3D1.4 applies to determine a combined offense level when more than one group of criminal offenses is involved. The combined offense level is determined by taking the offense level for the group with the highest offense level and then adding an additional offense-level increase derived from the table in § 3D1.4. The amount of the additional increase is based on the number of "units" counted. The number of units, in turn, is derived from the number of groups and their relative severity. *See* U.S.S.G. § 3D1.4(a)-(c).

[2] The § 3553(a) sentencing factors include the nature and circumstances of the offense, the history and characteristics of the defendant, the applicable guideline range, and the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to afford adequate deterrence to criminal conduct, and to protect the public. 18 U.S.C. § 3553(a)(1)–(2), (4).

Starting with the number of units, § 3D1.4(a) explains that we "[c]ount as one Unit the Group with the highest offense level[,]" and then add "one additional Unit for each Group that is equally serious or from **1** to **4** levels less serious." U.S.S.G. § 3D1.4(a). Bennett has two groups of offenses: Group 1 (Counts 1-3 and 6-8) and Group 2 (Count 5). At his original sentencing, Group 1 counted as one unit because it had the higher offense level (level 36), and Group 2 counted as one unit because it was 1 level less serious (level 35). Based on the table in § 3D1.4, two units equal a 2-level increase in the offense level. *Id.* § 3D1.4.

Amendment 782 reduced Group 1's offense level from 36 to 34. As a result, Group 2 now counts for one unit because it has the higher offense level (level 35), and Group 1 counts as one unit because it is 1 level less serious (level 34). Again, Bennett has two units, requiring a 2-level increase. While Amendment 782 flipped the relative position of Bennett's two groups, the number of units remained the same, and Bennett is mistaken that the district court changed the number of units when ruling on his § 3582(c)(2).

The district court also properly added the 2-level table increase to Group 2's offense level of 35 when calculating his amended combined offense level. Under § 3D1.4, the table increase is added to the group with the highest offense level. Had Amendment 782 been in effect when Bennett originally was sentenced, the 2-level table increase would have been added to Group 2 instead of Group 1.

Consequently, the amended guideline range of 210 to 262 months, based on a combined offense level of 37, reflects "the amended guideline range that would have been applicable to [Bennett] if [Amendment 782] had been in effect at the time [he] was sentenced." U.S.S.G. § 1B1.10(b)(1); *see Glover*, 686 F.3d at 1206. In sum, the district court properly recalculated Bennett's amended guideline range.

The district court also did not abuse its discretion in granting a sentence reduction. The record as a whole shows that the district court adequately considered the § 3553(a) factors, even if it did not discuss them in any detail. *See Williams*, 557 F.3d at 1256; *Eggersdorf*, 126 F.3d at 1322. The court notified the parties of its proposed sentence reduction, asked for any objections, and then issued an order stating that it had considered Bennett's motion, the sentencing factors in 18 U.S.C. § 3553(a), and Bennett's objections to the court's proposed order. In addition, by resentencing Bennett to a "comparable" point in his amended guideline range, the court indicated that the original sentencing considerations carried over to the § 3582(c)(2) proceeding. And, while the court was permitted to consider Bennett's post-sentencing rehabilitative conduct, it was not required to do so. *See* U.S.S.G. § 1B1.10 cmt. n.1(B)(iii) (stating that "the court ***may consider*** post-sentencing conduct of the defendant that occurred after imposition" of the sentence in determining whether and to what extent a reduction is warranted (emphasis added)); *see also Williams*, 557 F.3d at 1256.

In sum, the district court did not abuse its discretion in reducing Bennett's eligible sentence to 257 months of imprisonment. Accordingly, we affirm.

**AFFIRMED.**