[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-13391

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAFAEL ALVAREZ,
a.k.a Rafa,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:19-cr-00076-LMM-CCB-14

Before LAGOA, BRASHER, and WILSON, Circuit Judges.

PER CURIAM:

Rafael Alvarez, proceeding *pro se*, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence. Alvarez contends that Amendment 821 to the Sentencing Guidelines retroactively qualifies him for a two-level reduction to his offense level. Because Alvarez does not qualify for such a reduction, we affirm.

I.

In March 2019, Alvarez was charged with conspiring to possess with intent to distribute a controlled substance, in violation of 21 U.S.C. § 846. He pleaded guilty to this charge.

A probation officer prepared a presentence investigation report that calculated Alvarez's base offense level as 38. The officer added two points—an aggravating role enhancement consistent with U.S.S.G. § 3B1.1(c), because Alvarez was an organizer, leader, manager, or supervisor in qualifying criminal activity. The officer then subtracted three points, consistent with U.S.S.G. § 3E1.1(a)–(b), because Alvarez accepted responsibility. Thus, Alvarez was left with a total offense level of 37.

The officer then calculated a criminal history category of I. When combined with Alvarez's offense level, this criminal history

category yielded a Guidelines imprisonment range of 210 to 262 months.

Alvarez filed a sentencing memorandum in which he argued, among other things, that he did not qualify for the aggravating role enhancement because he was not an organizer, leader, manager, or supervisor in the criminal activity. The government responded that, to the contrary, Alvarez should receive a three-level, instead of a two-level, upward adjustment because he was a manager or supervisor in the criminal activity, and because the criminal activity involved five or more participants.

At sentencing, the district court determined that Alvarez was subject to a three-level enhancement under U.S.S.G. § 3B1.1(b), thereby raising his offense level to 38 and his Guidelines range to 235 to 293 months. The district court then varied downward under 18 U.S.C. § 3553(a), sentencing Alvarez to 156 months' imprisonment, to be followed by five years' supervised release.

In October 2023, Alvarez moved to reduce his sentence under 18 U.S.C. § 3582(c)(2), arguing that he was eligible for a two-point reduction in his offense level under the new zero-point offender provision added by the 2023 Sentencing Guidelines Manual. That provision provides for a decrease in a defendant's offense level if the defendant, among other things, "did not receive an adjustment under §3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848." U.S.S.G. amend. 821, Pt. B; *id.* § 4C1.1(a)(10) (2023). The

government responded that Alvarez did not qualify for the downward adjustment because he received an aggravating role adjustment.

The district court denied Alvarez's motion, concluding that, under the plain language of U.S.S.G. § 4C1.1(a)(10) (2023), "a defendant seeking relief . . . must meet 'all of the following criteria.'" "Because both receiving an adjustment under U.S.S.G. § 3B1.1 and engaging in a continuing criminal enterprise are listed criteria, the presence of either destroys the capability to receive relief under Amendment 821."

Alvarez appealed.

II.

"In a § 3582(c)(2) proceeding, we review *de novo* the district court's legal conclusions regarding the scope of its authority under the Sentencing Guidelines. We review *de novo* questions of statutory interpretation." *United States v. Phillips*, 597 F.3d 1190, 1194 n.9 (11th Cir. 2010) (quoting *United States v. Moore*, 541 F.3d 1323, 1326 (11th Cir. 2008)).

III.

Alvarez argues that a defendant is eligible for zero-point offender status under U.S.S.G. § 4C1.1(a)(10) unless he both received an aggravating role adjustment under U.S.S.G. § 3B1.1 and engaged in a continuing criminal enterprise. Based on this reading, he contends that the district court erred by denying him zero-point

offender status and the attendant two-point reduction to his offense level. We disagree.

Amendment 821 provides that, for a defendant to qualify for a two-level reduction, it must be true that he "did not receive an adjustment under §3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848." U.S.S.G. amend. 821, Pt. B; *id.* § 4C1.1(a)(10) (2023). Accordingly, under the plain language, a defendant must *both* (1) "not receive an adjustment" and (2) "not engage[] in a continuing criminal enterprise" to qualify. *Id.* In other words, if a defendant *is* subject to an aggravating role enhancement or *is* engaged in a continuing criminal enterprise, he would be barred from zero-point offender status. Alvarez's argument that a defendant is barred only where he both received an aggravating role adjustment *and* engaged in a continuing criminal enterprise misconstrues this text. *See id.*

Our interpretation is consistent with several sister circuits. *See, e.g.*, *United States v. Cervantes*, 109 F.4th 944 (7th Cir. 2024); *United States v. Morales*, 122 F.4th 590 (5th Cir. 2024); *United States v. Milchin*, 128 F.4th 199, 202–03 (3d Cir. 2025); *United States v. Shaw*, No. 24-6638, 2024 WL 4824237, at *1 (4th Cir. Nov. 19, 2024) (unpublished); *United States v. Pearce*, No. 23-6079, 2024 WL 3458085, at *9 (6th Cir. July 18, 2024) (unpublished). Because Alvarez received an aggravating role adjustment, he did not qualify for a two-point reduction to his offense level as a zero-point offender, and the district court did not err in denying his motion.

IV.

For the foregoing reasons, we **AFFIRM**.