NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13996
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

YOVANNY HERNANDEZ SEVERINO,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:18-cr-00465-WFJ-AEP-3

Before LUCK, LAGOA, and KIDD, Circuit Judges.

PER CURIAM:

Yovanny Severino, a federal prisoner proceeding pro se, appeals the district court's orders denying his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2) based on Amendment 821

to the Sentencing Guidelines and denying his motion for reconsideration of its order denying his § 3582 motion. The government, in turn, moves for summary affirmance of the district court's orders.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

We review de novo the district court's legal determination as to whether a defendant is eligible for relief under § 3582(c)(2). *United States v. Lawson*, 686 F.3d 1317, 1319 (11th Cir. 2012). If the defendant is eligible for a sentence reduction under § 3582(c)(2), then we review the decision to deny a sentence reduction for abuse of discretion. *United States v. Caraballo-Martinez*, 866 F.3d 1233, 1238, 1248 (11th Cir. 2017). We also review the district court's order denying a motion for reconsideration of the denial of a sentence reduction for abuse of discretion. *United States v. Llewelyn*, 879 F.3d 1291, 1293-94 (11th Cir. 2018).

A district court can abuse its discretion by "appl[ying] an incorrect legal standard, follow[ing] improper procedures in making its determination, or mak[ing] clearly erroneous factual findings." *United States v. Giron*, 15 F.4th 1343, 1345 (11th Cir. 2021). "[W]e

and other federal appellate courts have inferred from a district court's explicit factual findings and conclusion implied factual findings that are consistent with its judgment although unstated." *United States v. $242,484.00*, 389 F.3d 1149, 1154 (11th Cir. 2004) (en banc).

We construe a pro se litigant's pleadings liberally. *Alba v. Montford*, 517 F.3d 1249, 1252 (11th Cir. 2008). However, pro se litigants are not relieved from following procedural rules. *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007).

A district court may reduce 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). "This authority is limited to those guideline amendments listed in U.S.S.G. § 1B1.10[(d)] that have the effect of lowering the defendant's applicable guideline range." *United States v. Williams*, 557 F.3d 1254, 1256 (11th Cir. 2009) (addressing § 1B1.10(c), later amended to § 1B1.10(d)) (quotation marks omitted).

In considering a motion for a sentence reduction under § 3582(c)(2), a district court must engage in a two-step analysis. *Dillon v. United States*, 560 U.S. 817, 826-27 (2010). At the first step, a court must determine whether a retroactive amendment to the Sentencing Guidelines has lowered a defendant's guideline range consistent with the applicable policy statements. *Id.* Second, if a defendant is eligible for relief, the court must consider whether a sentence reduction would be consistent with the applicable policy

statement, the 18 U.S.C. § 3553(a) factors, the safety of the public, and the defendant's post-sentencing conduct. U.S.S.G. § 1B1.10, comment. (n.1); *see also Dillon*, 560 U.S. at 827.

In November 2023, Amendment 821 to the Sentencing Guidelines went into effect. *See* U.S. Sentencing Commission, *Adopted Amendments* (*Effective November 1, 2023*), Amendment 821. In the Amendment, U.S.S.G. § 4A1.1(d) was stricken and replaced with § 4A1.1(e). U.S.S.G. Supp. App. C., Amend. 821; *see also* U.S.S.G. § 1B1.10. Whereas the prior version of the Guideline provided for two criminal history points if a defendant committed the instant offense while still serving a previous sentence, to limit the impact of criminal history "status points" on a defendant's sentence, the amended Guideline provides that a defendant will receive one criminal history point for committing the instant offense while still serving a previous sentence only if he otherwise has seven or more criminal history points. U.S.S.G. Supp. App. C., Amend. 821. Part B, Subpart 1 of Amendment 821 also modified Chapter 4 by adding § 4C1.1—titled "Adjustment for Certain Zero-Point Offenders"—which provides for a two-level decrease in a defendant's offense level if the defendant satisfies certain criteria, including that "the defendant did not receive any criminal history points." *See id.*; U.S.S.G. § 4C1.1(a)(1). Amendment 825 made these portions of Amendment 821 retroactively applicable under U.S.S.G. § 1B1.10(d). *See* U.S. Sentencing Commission, *Adopted Amendments* (*Effective November 1, 2023*), Amendment 825.

Here, the government's position that the district court did not err in denying Severino's motion for a sentence reduction under § 3582(c)(2) or his motion for reconsideration is clearly correct as a matter of law. Severino did not receive any criminal history "status points" at his initial sentencing, as he did not commit his instant offenses while he was under a criminal justice sentence for either of his prior convictions, and did not qualify for the new two-level reduction as a zero-point offender, as he had six criminal history points for his two prior offenses. Therefore, the district court did not err in determining that he was ineligible for a sentence reduction under § 3582(c)(2) because neither of the retroactive amendments in Amendment 821 lowered Severino's guideline range or in denying his motion for reconsideration of that determination. As the district court's rulings were clearly correct as a matter of law, we need not address the government's arguments regarding the timeliness of Severino's appeal. Accordingly, we grant the government's motion for summary affirmance. *See Groendyke*, 406 F.2d at 1162.

AFFIRMED.