

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**RUDY PEREZ,**

**Defendant.**

**Case No. 14-20128-JAR**

**MEMORANDUM AND ORDER**

On May 14, 2015, Defendant Rudy Perez entered into a written Fed. R. Crim. P. 11(c)(1)(C) plea agreement on one count of possession of a firearm in furtherance of a drug trafficking offense in violation of 18 U.S.C. § 924(c)(1)(A)(i) and one count of felon in possession of a firearm and ammunition in violation of §§ 922(g)(1) and 924(a)(2).<sup>1</sup> The parties agreed to a proposed Rule 11(c)(1)(C) sentence of 24 months' imprisonment for Count 3 and 60 months' imprisonment on Count 2, which would be consecutive to one another.<sup>2</sup>

A presentence investigation report was prepared and calculated Defendant's base offense level at 20, a two-level increase for conduct involving at least four firearms pursuant to U.S.S.G. § 2K2.1(b)(1)(A), and a three-level decrease for acceptance of responsibility, for a total offense level of 19.<sup>3</sup> Defendant's criminal history score was II, resulting in a Guidelines range of 33 to 41 months on Count 3 and a mandatory consecutive sentence of 60 months on Count 2. Defendant was subsequently sentenced to a total term of 84 months' imprisonment.<sup>4</sup>

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<sup>1</sup>Doc. 15.

<sup>2</sup>*Id.* at 2.

<sup>3</sup>Doc. 20.

<sup>4</sup>Doc. 22.

This matter is now before the Court on Defendant’s motion filed pursuant to 18 U.S.C. § 3582(c) to modify his sentence pursuant to Amendment 782 (Doc. 24). Section 3582(c)(2) permits a district court to modify a sentence where it sentenced a defendant “based on a sentencing range that has subsequently been lowered by the Sentencing Commission.”<sup>5</sup> “Unless the basis for resentencing falls within one of the specific categories authorized by section 3582(c), the district court lack[s] jurisdiction to consider [a defendant’s] request.”<sup>6</sup> Here, Defendant’s sentence was not based on a Guidelines sentencing range. Instead, Defendant pleaded guilty under a Rule 11(c)(1)(C) plea agreement that required a total 84-month sentence, and which did not refer to a proposed sentence “within a particular Guidelines sentencing range.”<sup>7</sup> Accordingly, this Court has no jurisdiction to reduce Defendant’s sentence under § 3582(c)(2), and his motion is dismissed for lack of jurisdiction.<sup>8</sup>

Moreover, even if the Court had jurisdiction to reduce Defendant’s sentence, he is ineligible for relief under Amendment 782. The Amendment retroactively reduces base-offense levels corresponding to the same weight of controlled substances listed in U.S. Sentencing Guidelines Manual § 2D1.1, effectively lowering the Guidelines minimum sentences for drug offenses.<sup>9</sup> It has no effect on sentences like Defendant’s, which was calculated by applying

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<sup>5</sup>18 U.S.C. § 3582(c)(2).

<sup>6</sup>*United States v. Gray*, 630 F. App’x 809, 811 (10th Cir. 2015) (quoting *United States v. Smartt*, 129 F.3d 539, 541 (10th Cir. 1997)).

<sup>7</sup>*Freeman v. United States*, 564 U.S. 522, 538 (2011).

<sup>8</sup>*Gray*, 630 F. App’x at 812 (citing *United States v. White*, 765 F.3d 1240, 1250 (10th Cir. 2014)).

<sup>9</sup>*United States v. Goodwin*, —F.App’x—, 2015 WL 7974633, at \*2 (10th Cir. Dec. 7, 2015).

§§ 2K2.1 and 2K2.4, the Guidelines relevant to his firearms charges.<sup>10</sup>

**IT IS THEREFORE ORDERED BY THE COURT** that Defendant's Motion for Reduction of Sentence (Doc. 24) is DISMISSED for lack of jurisdiction.

**IT IS SO ORDERED.**

Dated: June 8, 2016

S/ Julie A. Robinson  
JULIE A. ROBINSON  
UNITED STATES DISTRICT JUDGE

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<sup>10</sup>U.S.S.G. Supp. App. C., amend. 788 (2014); *United States v. Gay*, 771 F.3d 681, 683 n.1 (10th Cir. 2014).