

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 21-10008-JWB

AARON WIRTZ,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on Defendant's motion for sentence reduction. (Doc. 65.) The motion is ripe for decision. (Doc. 67.)¹ The motion is DENIED for the reasons stated herein.

I. Facts and Procedural History

On December 21, 2021, Defendant pleaded guilty to one count of possession with the intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1). (Doc. 44.) Defendant was sentenced to 72 months imprisonment on August 9, 2022. (Doc. 60.) Defendant did not file an appeal.

Defendant now moves to reduce his sentence due to a change in the sentencing guidelines.

II. Analysis

Defendant seeks a reduction in his sentence on the basis that Amendment 821 to the Sentencing Guidelines provides an adjustment for zero-point offenders. "A district court does not have inherent authority to modify a previously imposed sentence; it may do so only pursuant to statutory authorization." *See United States v. Mendoza*, 118 F.3d 707, 709 (10th Cir. 1997). Section 3582 allows for a possible sentence reduction for a defendant "who has been sentenced to

¹ Defendant did not file a reply brief and the time for doing so has now passed.

a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” *See* 18 U.S.C. § 3582(c)(2). The Sentencing Commission amended the United States Sentencing Guidelines effective November 1, 2023. *See* 88 Fed. Reg. 28,254, 2023 WL 3199918 (May 3, 2023). Subpart 1 of Part B of Amendment 821 creates a new guideline, § 4C1.1, that provides for a decrease of two offense levels for certain “Zero-Point Offenders.” *See* United States Sentencing Comm’n, Amendment 821, <https://www.ussc.gov/guidelines/amendment/821> (last visited March 4, 2024).

Defendant is a zero-point offender. (Doc. 47 ¶ 66.) However, in order to receive an adjustment under the amended guideline, Defendant must also meet other criteria. *See* U.S.S.G. § 4C1.1. (stating that “if the defendant meets **all** of the following criteria” then “decrease the offense level . . . by 2 levels.”) One of those criteria states that “the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense.” *Id.* § 4C1.1(a)(7). According to the presentence report, Defendant possessed firearms in connection with the offense and was given an enhancement as a result. (Doc. 47 ¶ 52.) Therefore, he would not be entitled to a reduction under the new guideline.

III. Conclusion

Defendant’s motion for sentence reduction (Doc. 65) is DENIED.

IT IS SO ORDERED. Dated this 4th day of March, 2024.

s/ John W. Broomes
JOHN W. BROOMES
UNITED STATES DISTRICT JUDGE