

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 21-10049-1-JWB

AARON PERRY,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on Defendant Aaron Perry's motion for a sentence reduction. (Doc. 132.) The motion is ripe for decision.¹ (Doc. 134.) The motion is DENIED for the reasons stated herein.

I. Facts and Procedural History

On March 9, 2023, Defendant pleaded guilty to a superseding information charging him with possession with the intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1). (Doc. 110.) A presentence report ("PSR") was prepared by the probation office. (Doc. 118.) According to the PSR, Defendant was assessed one criminal history point for a prior conviction of possession of cocaine and driving under the influence in July 2009. (Doc. 118 ¶ 41.) As a result, Defendant's total criminal history score was one and his criminal history category was also I. (*Id.* ¶¶ 42–43.) Based on a total offense level of 29 and a criminal history category of I, the guideline imprisonment range was 87 to 108 months. (*Id.* ¶ 102.) On June 9, 2023, Defendant was sentenced to 36 months imprisonment. (Doc. 122.)

¹ Defendant did not file a reply and the time for doing so has now passed. Although Defendant's motion is titled as a motion to clarify whether the new amendments are applicable to him, the court construes the motion as one seeking a reduction under the amendments to the guidelines.

Defendant did not file an appeal. Defendant has filed a motion to reduce his sentence in accordance with the amended guidelines. The government objects on the basis that the amended guidelines do not impact Defendant's sentence.

II. Analysis

“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 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). Part A of Amendment 821 limits the criminal history impact of “status points,” and Subpart 1 of Part B of Amendment 821 creates a new guideline, § 4C1.1, that provides for a decrease of two offense levels for “Zero-Point Offenders.” *See* United States Sentencing Comm'n, Amendment 821, <https://www.ussc.gov/guidelines/amendment/821> (last visited March 4, 2024).

First, the amendment to the guidelines affected the number of status points that could be assigned to Defendants who committed an offense while under a criminal justice sentence. *See* U.S.S.G. § 4A1.1(e). Defendant, however, did not receive any status points. Therefore, this amendment would not apply.

Second, the amendment created a new guideline for zero-point offenders. *See* § 4C1.1. This provision applies if a defendant did not receive any criminal history points. *Id.* § 4C1.1(a)(1). Defendant received one criminal history point for his prior conviction. Therefore, he would not be eligible for a sentence reduction as he is not a zero-point offender.

III. Conclusion

Defendant's motion for a sentence reduction (Doc. 132) is DENIED.

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

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