

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-3047

September Term, 2017

1:14-cr-00191-RC-1

Filed On: March 15, 2018

United States of America,

Appellee

v.

Matthew Nori,

Appellant

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Rogers, Griffith, and Kavanaugh, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing; appellee’s motion for leave to file a supplemental appendix; and the lodged supplemental appendix, it is

ORDERED that the motion for leave to file a supplemental appendix be granted. See D.C. Cir. Rules 24(b), 30(e). The Clerk is directed to file appellee’s lodged supplemental appendix. It is

FURTHER ORDERED AND ADJUDGED that the district court’s order, filed June 1, 2017, be affirmed. Appellant’s post-conviction motion to reduce his sentence did not satisfy the limited grounds for such relief under 18 U.S.C. § 3582(c) or Federal Rule of Criminal Procedure 35. To the extent appellant now argues that the district court should have construed his motion under 28 U.S.C. § 2255, appellant expressly consented to the district court treating his motion as having been brought under § 3582(c), rather than § 2255. See United States v. Harrison, 103 F.3d 986, 992 (D.C. Cir. 1997).

Moreover, appellant has failed to show that he would have been entitled to relief under § 2255. Appellant argues that his sentence is unreasonable because the district court failed to consider certain sentencing factors in violation of 18 U.S.C. § 3553(a). This alleged error, however, does not constitute the type of “fundamental defect” warranting relief under § 2255 for a non-jurisdictional, non-constitutional error. United

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States v. Addonizio, 442 U.S. 178, 185 (1979) (quoting Hill v. United States, 368 U.S. 424, 428 (1962)). And to the extent appellant argues that the alleged sentencing disparities also violated his constitutional right to equal protection of the law, the comparator cases on which appellant relies fail to show that the government “treat[ed] similarly situated individuals differently without a rational basis.” Noble v. U.S. Parole Comm’n, 194 F.3d 152, 154 (D.C. Cir. 1999) (emphasis omitted).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam