United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-3069 **September Term, 2019**

1:11-cr-00238-CKK-1

Filed On: May 28, 2020

United States of America,

Appellee

v.

Gilberto Lerma-Plata,

Appellant

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

BEFORE: Henderson, Wilkins, and Rao, 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 and the motion to appoint counsel, it is

ORDERED that the motion to appoint counsel be denied. The interests of justice do not warrant appointment of counsel in this case. It is

FURTHER ORDERED AND ADJUDGED that the district court's order, filed July 29, 2019, be affirmed. Pursuant to 18 U.S.C. § 3582(c)(2), the district court has discretionary authority to reduce a defendant's sentence. On appeal, "this court 'must first ensure that the district court committed no significant procedural error .... [and] then consider the substantive reasonableness of the [district court's decision to grant or deny a reduction] under an abuse-of-discretion standard.'" United States v. Galaviz, 892 F.3d 378, 381–82 (D.C. Cir. 2018) (internal citation omitted) (alterations in original). Here, the district court did not commit any procedural errors as it properly applied the two-step inquiry governing § 3582(c)(2) motions. See Dillon v. United States, 560 U.S. 817, 826-27 (2010). Additionally, the district court did not abuse its discretion in denying appellant's motion for a sentencing reduction as its decision was substantively reasonable. Appellant's arguments to the contrary lack merit.

Specifically, the district court did not commit a procedural error by not addressing

the Sentencing Commission's reasoning behind Amendment 782 in its opinion. Such reasoning does not qualify as a sentencing factor under 18 U.S.C. § 3553(a) and is not in the applicable Guidelines policy statement, U.S.S.G. § 1B1.10. Rather, consistent with the two-step inquiry outlined in Dillon, the district court's opinion demonstrates that it determined appellant was eligible for a sentencing reduction and then "consider[ed] any applicable § 3553(a) factors." Dillon, 560 U.S. at 827.

Substantively, appellant's arguments refuting findings made in the district court's original sentencing decision are outside the scope of this appeal. "A § 3582(c)(2) motion is not the appropriate vehicle for raising issues related to the original sentencing. Those are arguments for direct appeal and are not cognizable under § 3582(c)(2)." United States v. Kennedy, 722 F.3d 439, 443 (D.C. Cir. 2013) (internal citation and quotation marks omitted). And the district court did not abuse its discretion in holding that denying appellant's motion would not result in sentencing disparities. Appellant is not similarly situated to the other criminal defendants identified on appeal. See United States v. Mattea, 895 F.3d 762, 768 (D.C. Cir. 2018) ("[Section 3553(a)(6)] does not require the district court to avoid sentencing disparities between [ ]defendants who might not be similarly situated.") (internal citation and quotation marks omitted).

Lastly, the district court did not abuse its discretion or procedurally err by not reducing appellant's sentence by the differential between the Guidelines sentencing range at the time he was sentenced and the revised Guidelines range. See United States v. Jones, 846 F.3d 366, 371-72 (D.C. Cir. 2017); Galaviz, 892 F.3d at 384.

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

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk