

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**SAMUEL GEORGE HURD, III,**

**Defendant**

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**No. 3:12-cr-03-P (01)**

**ORDER**

Defendant Samuel George Hurd, III has filed a motion under 18 U.S.C. § 3582(c)(2) to reduce his sentence based on the 2014 retroactive amendments to the United States Sentencing Guidelines (the “USSG”), which reduced the base offense levels applicable to most quantities on the drug and chemical quantity tables, and is commonly known as Amendment 782. Dkt. No. 221. The Court **DENIES** Defendant’s motion for the reasons explained below.

Defendant pleaded guilty to one count of conspiracy to possess with intent to distribute a controlled substance, in violation of 21 U.S.C. § 846 [Count 1 of the superseding indictment filed March 19, 2013]. The Court determined the drug quantity amount attributable to Defendant to be between 15 and 50 kilograms of cocaine and 3,000 and 10,000 kilograms of marijuana, which, under the then applicable Guidelines, resulted in a base offense level of 34. His total offense level was determined to be 41. That, combined with a criminal history category of I, resulted in a Guidelines sentence range of 324 to 405 months. But the Court imposed a variant sentence of 180 months’ incarceration.

Before a district court may determine “whether to reduce a sentence under §

3582(c)(2),” it first must decide “whether the defendant is eligible for a sentence modification, and if so, must consider the applicable 18 U.S.C. § 3553(a) factors to decide whether a reduction ‘is warranted in whole or in part under the particular circumstances of the case.’” *United States v. Benton*, 546 F. App’x 365, 368 (5th Cir. 2013) (quoting *Dillon v. United States*, 560 U.S. 817, 827 (2010)).

“A reduction must also be consistent with the Sentencing Commission’s applicable policy statements.” *Id.* (citing § 3582(c)(2)). In that regard, “a court is generally prohibited from reducing a sentence under § 3582(c)(2) ‘to a term that is less than the minimum of the amended guideline range.’” *United States v. Garcia*, 655 F.3d 426, 430 (5th Cir. 2011) (quoting USSG § 1B1.10(b)(2)(A)). But a “court is authorized to give a comparable, below-guidelines reduction if the offender previously received a below-guidelines sentence because of substantial assistance.” *United States v. Nichols*, 789 F.3d 795, 796 (7th Cir. 2015) (citing USSG § 1B1.10(b)(2)(B); *United States v. Glover*, 686 F.3d 1203, 1207 (11th Cir. 2012)).

The old version of subdivision (B) broadly permitted reductions below the amended guideline range if the defendant was originally given a below-guidelines sentence. It did not limit that permission (as it now does) only to defendants who originally earned below-guideline sentences for giving substantial assistance. Below-guideline sentences of all kinds were eligible for reductions below the amended guideline range.

*United States v. Pierre*, 614 F. App’x 422, 424 (11th Cir. 2015) (per curiam) (citing USSG § 1B1.10(b)(2)(B) (2010)); *see also Garcia*, 655 F.3d at 430 (considering 2007 and 2008 amendments to the USSG).

But a court is required to “use the version of [§ 1B1.10] that is in effect on the

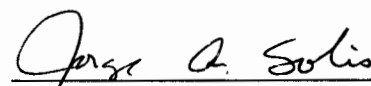
date on which the court reduces the defendant's term of imprisonment.” *Pierre*, 614 F. App'x at 424 (quoting USSG § 1B1.10 cmt. n.8 (2014)). “The current version of subdivision (B) is the one courts must apply, and it prohibits reducing a sentence below the amended guideline range except when the defendant was originally given a below-guideline sentence for substantial assistance.” *Id.* at 424-25.

Although Amendment 782 operates to lower Defendant's base offense level to 34 and his total offense level to 41, which combined with a criminal history category of I, results in a Guidelines sentence range of 262 to 327 months, because his original below-guidelines sentence of 180 months was not imposed due to substantial assistance – but pursuant to the Section 3553(a) factors, *see, e.g.*, Dkt. No. 206 (sentencing tr.) at 162 – the Court is not authorized to further reduce Defendant's sentence. *See, e.g., United States v. King*, 610 F. App'x 965, 966 (11th Cir. 2015) (per curiam) (affirming district court's denial of Section 3582(c)(2) motion where defendant's originally imposed sentence (of 75 months) – which was “attributable to a § 3553(a) downward variance, not a § 5K1.1 motion” – was well below the minimum of the amended guideline range (of 168 months)).

Defendant's Section 3582(c)(2) motion [Dkt. No. 221] is **DENIED**.

**SO ORDERED.**

Signed this 8<sup>th</sup> day of January, 2016.



JORGE A. SOLIS  
CHIEF JUDGE