

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 30, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BOUNSOUAY KHANYA,

Defendant - Appellant.

No. 26-3137
(D.C. No. 5:19-CR-40081-TC-2)
(D. Kan.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **McHUGH**, and **CARSON**, Circuit Judges.

Defendant-Appellant Bounsouay Khanya, proceeding pro se,¹ appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion seeking a reduction to his 120-month sentence pursuant to Amendment 821 to the United States Sentencing

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

¹ Where Mr. Khanya is appearing without counsel, we “liberally construe his filings, but we will not act as his advocate.” *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

Guidelines (“U.S.S.G.” or “Guidelines”). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court’s denial.

I. BACKGROUND

A grand jury indicted Mr. Khanya for Possession with Intent to Distribute Methamphetamine (Count One) and Cocaine (Count Two), in violation of 21 U.S.C. § 841(a)(1).

On July 19, 2022, Mr. Khanya entered a plea agreement as to Count Two, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).² As part of the plea agreement, the parties recommended that the district court bind itself to a sentencing range of 84 to 120 months.

Using the 2021 version of the Guidelines, the United States Probation Office prepared a presentence investigation report (“PSR”). The PSR calculated Mr. Khanya’s offense level as 33. The PSR also assigned Mr. Khanya a criminal history score of 8. Six of these points were for previous crimes Mr. Khanya committed. The PSR added two points pursuant to the then-governing version of U.S.S.G. § 4A1.1(d) because Mr. Khanya had committed the offense while serving a prior criminal justice sentence. *See* U.S.S.G. § 4A1.1 (2015). A resulting score of 8 placed Mr. Khanya in criminal history category IV. An offense level of 33 and a criminal history category of IV yielded an advisory Guidelines sentencing range of 188 to 235 months.

² The Government agreed to dismiss Count One of the Indictment.

The district court sentenced Mr. Khanya on October 20, 2022. The district court adopted the PSR's calculations. However, consistent with the parties' Rule 11(c)(1)(C) agreement, the district court sentenced Mr. Khanya to 120 months in prison—the top of the range recommended by the parties, but sixty-eight months below the lower bound of the advisory range—followed by three years of supervised release.

After Mr. Khanya's sentencing, the Sentencing Commission adopted Amendment 821 to the Guidelines. Sentencing Guidelines for the United States Courts, 88 Fed. Reg. 60534 (Sept. 1, 2023). Part A of Amendment 821 places new limits on the assignment of criminal history status points for individuals who committed offenses while serving a criminal justice sentence and applies retroactively. *Id.*; U.S.S.G. § 4A1.1(e).

On April 22, 2026, Mr. Khanya filed an 18 U.S.C. § 3582(c)(2) motion seeking a reduction to his sentence based on Part A of Amendment 821. On May 6, 2026, the district court denied Mr. Khanya's motion. The court determined that Amendment 821 would result in Mr. Khanya receiving a lower criminal history score, and therefore a lower sentencing range of 168 to 210 months. However, the court went on to note, the Guidelines did not permit the reduction of a sentence to a term below the minimum of the amended range. Because the district court had sentenced Mr. Khanya to 120 months in prison, the court denied his motion.

On May 28, 2026, Mr. Khanya filed a Motion for Reconsideration, which the court denied on June 2, 2026. Mr. Khanya subsequently filed this timely appeal.

II. STANDARD OF REVIEW

“The scope of a district court’s authority in a resentencing proceeding under § 3582(c)(2) is a question of law that we review de novo.” *United States v. Rhodes*, 549 F.3d 833, 837 (10th Cir. 2008). “We review for an abuse of discretion a district court’s decision to deny a reduction in sentence under 18 U.S.C. § 3582(c)(2).” *United States v. Sharkey*, 543 F.3d 1236, 1238 (10th Cir. 2008).

III. DISCUSSION

Generally, federal courts “may not modify a term of imprisonment once it has been imposed.” *United States v. Battle*, 706 F.3d 1313, 1317 (10th Cir. 2013) (quoting 18 U.S.C. § 3582(c)). Section 3582(c)(2), however, permits a reduction where a defendant “has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission,” but only “if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2).³

The statute sets forth a two-step inquiry in determining whether to reduce a sentence. First, a court must “determine the prisoner’s eligibility for a sentence modification and the extent of the reduction authorized.” *Battle*, 706 F.3d at 1317 (quotation marks omitted). Next, “[i]f a reduction is authorized, the court may consider any applicable [18 U.S.C.]§ 3553(a) factors and determine whether, in its

³ Those statements appear at U.S.S.G. § 1B1.10. *United States v. C.D.*, 848 F.3d 1286, 1289 (10th Cir. 2017); *see also Dillon v. United States*, 560 U.S. 817, 827 (2010).

discretion, the reduction authorized by reference to the policies relevant at step one is warranted in whole or in part under the particular circumstances of the case.” *Id.* (internal quotation marks omitted).

Mr. Khanya’s appeal cannot succeed because a reduction to his sentence is not consistent with applicable policy statements.

Section 1B1.10(a)(1) of the Guidelines provides that where the range applicable to that defendant’s sentence “has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (d) . . . , the court may reduce the defendant’s term of imprisonment as provided by 18 U.S.C. § 3582(c)(2).” Subsection (d) includes Amendment 821 Part A. U.S.S.G. § 1B1.10(d).

At the time of Mr. Khanya’s sentencing, the Guidelines required the addition of two status points to Mr. Khanya’s criminal history score because Mr. Khanya had committed the charged offense while serving a different criminal sentence. U.S.S.G. § 4A1.1(d) (2015). Under the amended scheme, Mr. Khanya would receive no additional status points on that basis. *See* U.S.S.G. § 4A1.1(e). Accordingly, as the district court determined, Mr. Khanya’s criminal history score would be 6 rather than 8, placing him in criminal history category III. U.S.S.G. ch. 5, pt. A. Because Mr. Khanya had an offense level of 33, Mr. Khanya’s new Guidelines range would be 168 to 210 months, rather than 188 to 235 months. *Id.* Amendment 821 thus would lower the applicable Guidelines range. *Cf.* U.S.S.G. § 1B1.10(a)(2)(B).

However, § 1B1.10(b)(2)(A) provides that, except as stated in subdivision (b)(2)(B),⁴ “the court shall not reduce the defendant’s term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended [G]uideline[s] range[.]” The lower bound of the amended range is 168 months, but Mr. Khanya was sentenced to 120 months of imprisonment. Because his existing sentence is forty-eight months below the lowest sentence the district court could impose relying on the amended range, the district court correctly held it could not grant a reduction.

Mr. Khanya contends that notwithstanding whether Amendment 821 authorizes a sentence reduction, the court should resentence him under his Rule 11(c)(1)(C) plea agreement with the Government. This argument, too, is unsuccessful. “A district court does not have inherent authority to modify a previously imposed sentence; it may do so only pursuant to statutory authorization.” *United States v. Mendoza*, 118 F.3d 707, 709 (10th Cir. 1997). Mr. Khanya cites to no authority in support of his argument, nor does he point to any statutory authorization permitting the district court to do so. Accordingly, we reject his argument.

⁴ U.S.S.G. § 1B1.10(b)(2)(B) provides an exception for below-Guidelines sentences imposed “pursuant to a government motion to reflect the defendant’s substantial assistance to authorities[.]” That exception is not relevant to the present case.

IV. CONCLUSION

For the foregoing reasons, we AFFIRM the district court's order denying Mr. Khanya's motion under 18 U.S.C. § 3582(c)(2).

Entered for the Court

Carolyn B. McHugh
Circuit Judge