

United States Court of Appeals for the Fifth Circuit

No. 22-50873
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 5, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CHARLES EDWARD JOHNSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:07-CR-97-1

Before SMITH, SOUTHWICK, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Charles Johnson, federal prisoner #83808-180, appeals the denial of his 18 U.S.C. § 3582(c)(2) motion to reduce the 365-month sentence imposed for possession with intent to distribute at least five grams of a mixture or substance containing cocaine base within 1,000 feet of a public elementary school. Johnson sought reduction of his sentence based on Amendment 750 to the Sentencing Guidelines and in light of his post-sentencing conduct.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-50873

The district court decided that Johnson was not entitled to early release because he posed a serious danger to society, and the 18 U.S.C. § 3553(a) sentencing factors did not warrant a reduction. We review for abuse of discretion the decision whether to reduce a sentence under § 3582(c)(2). *United States v. Henderson*, 636 F.3d 713, 717 (5th Cir. 2011).

Johnson contends that the district court violated *Concepcion v. United States*, 142 S. Ct. 2389 (2022), by failing to consider his post-sentencing conduct. He also asserts that the court did not properly evaluate the factors that supported the grant of a reduction. Johnson additionally moves for summary judgment.

In *Concepcion*, the Court addressed § 404(b) of the First Step Act and determined that if a prisoner is eligible for relief under that provision because he was convicted of one of certain offenses that involve cocaine base, the district court may consider a wide range of factors upon resentencing. *Concepcion*, 142 S. Ct. at 2396, 2401–05. There is no indication that *Concepcion* broadened the scope of what district courts may consider when ruling on a § 3582(c)(2) motion, which, per the express dictates of Congress, may be granted only if a reduction is consistent with the applicable policy statements of the Sentencing Commission. *See id.* at 2401–05; § 3582(c)(2).

In any event, Johnson has not shown that the district court abused its discretion. *See Henderson*, 636 F.3d at 718. The court did not have to consider his rehabilitative conduct in determining whether a reduction was merited. *See United States v. Evans*, 587 F.3d 667, 673 & n.10 (5th Cir. 2009). The record otherwise suggests that the court gave due consideration to the § 3582(c)(2) motion—in which Johnson contended that he was entitled to an early release based on his post-sentencing conduct—as well as the applicable § 3553(a) factors. *See Henderson*, 636 F.3d at 718; *Evans*, 587 F.3d at 673. To the extent that Johnson disagrees with the weight the court gave to certain

No. 22-50873

factors, he may not show that the court abused its discretion on that basis. *See Evans*, 587 F.3d at 672–73.

Accordingly, the judgment is AFFIRMED. The motion for summary judgment is DENIED.