

United States Court of Appeals for the Fifth Circuit

No. 24-60120
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 22, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ISRAEL SOSA DE LA CRUZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:21-CR-138-1

Before HIGGINBOTHAM, JONES, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Israel Sosa De La Cruz, federal prisoner # 72988-509, appeals the district court's decision denying his 18 U.S.C. § 3582(c)(2) motion for a sentence reduction based on Amendment 821 to the Sentencing Guidelines. He argues that the district court erred by both denying him a reduction under U.S.S.G. § 4C1.1 and failing to explain its rationale for doing so.

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

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However, Sosa De La Cruz is not eligible under § 4C1.1 because he has one criminal history point arising from a 2015 state conviction and sentence for driving while intoxicated (DWI). *See* § 4C1.1(a)(1). We need not consider his arguments, raised for the first time in his reply brief, that the DWI sentence was too old and inconsequential to disqualify him from receiving a § 3582(c)(2) reduction such that the district court should have disregarded it. *See United States v. Scroggins*, 599 F.3d 433, 446-47 (5th Cir. 2010).

In any event, the 30-day DWI sentence was imposed on March 2, 2015—within 10 years of the commencement of the instant offense—and was, thus, properly counted as part of his criminal history. *See* U.S.S.G. §§ 4A1.1(c), 4A1.2(e)(2). Although Sosa De La Cruz contends that the district court should have, as a matter of policy and discretion, ignored his DWI sentence based on its age and lack of seriousness, the district court had no authority to do so. *See* U.S.S.G. § 1B1.10(a)(2), p.s. (providing that sentence reduction is not authorized under § 3582(c)(2) if amendment at issue is not applicable to defendant and does not have effect of lowering guidelines range); *Dillon vs. United States*, 560 U.S. 817, 825-26 (2010) (explaining that § 3582(c)(2) does not authorize resentencing and only authorizes reduction consistent with § 1B1.10).

As Sosa De La Cruz does not qualify for a reduction under § 4C1.1, the district court did not err by denying him § 3582(c)(2) relief, *see United States v. Calton*, 900 F.3d 706, 710 (5th Cir. 2018), and no further explanation was required under the “circumstances of [this] particular case.” *Chavez-Meza v. United States*, 585 U.S. 109, 116 (2018). The motion for leave to file an out-of-time reply is GRANTED, and the order of the district court is AFFIRMED.