UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA, Plaintiff, v. ALVARO COBIAN GOMEZ, Defendant.	CR. NO. 2:07-248-07 WBS ORDER RE: MOTION FOR SENTENCE REDUCTION PURSUANT TO 18 U.S.C. § 3582(c)(2)

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Before the court is defendant Alvaro Gomez's Motion for sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) ("section 3582(c)(2)") and Amendment 782 of the United States Sentencing Guidelines. (Def.'s Mot. (Docket No. 1387).) The government opposes defendant's Motion. (Gov't's Opp'n (Docket No. 1419).)

The court notes, as an initial matter, that defendant wishes to represent himself on this Motion. (See Docket No. 1388.) He has filed a waiver of counsel and motion for self-representation, (see id.), and twice opposed the Federal Defender

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Office's efforts to assign counsel to his case, (see Docket Nos. 1435 and 1472.) In light of defendant's repeated requests to proceed without counsel, the court will grant his request for self-representation and set aside its August 23, 2016 Order allowing for supplemental briefing and its November 23, 2016 Order appointing counsel to defendant. Because all briefs ordered by the court for defendant's Motion to reduce sentence have been submitted, (see July 12, 2016 Order (Docket No. 1407); Gov't's Opp'n; Def.'s Reply (Docket No. 1433)), the Motion is taken under submission.

On July 5, 2011, defendant pled guilty to one count of conspiracy to distribute and possess with intent to distribute at least fifty grams of methamphetamine and at least five grams of cocaine in violation of 21 U.S.C. § 841(a)(1) and 846, and two counts of use of a communication facility for the purpose of drug trafficking in violation of 21 U.S.C. § 843(b). (Presentence Report ("PSR") ¶ 1 (Docket No. 1248).) Defendant's Guidelines sentencing range, based on an offense level of 36 and a criminal history category of III, was 235 to 293 months in prison. (Id. ¶ 68.) On September 9, 2013, the court sentenced defendant to 240 months in prison. (Docket No. 1252.)

Defendant now seeks to reduce his sentence to 188 months pursuant to section 3582(c)(2) and Amendment 782. (Def.'s Mot. at 7.) Section 3582(c)(2) allows a federal court to "modify a term of imprisonment" where "a defendant [was] sentenced . . . based on a sentencing range that has subsequently been lowered by the [United States] Sentencing Commission." 18 U.S.C. § 3582(c)(2). The United States Supreme Court held in Dillon v.

United States, 560 U.S. 817 (2010) that section 3582(c)(2) involves "a two-step inquiry." Id. at 826. "A court must first determine that a reduction is consistent with [the policies set forth in] § 1B1.10" of the Guidelines ("section 1B1.10"). Id. "At step two of the inquiry, § 3582(c)(2) instructs a court to consider any applicable § 3553(a) factors and determine whether, in its 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. at 827.

With respect to step one, the government concedes that Amendment 782 reduced defendant's Guidelines sentencing range to 188 to 235 months and that a sentence reduction would be consistent with section 1B1.10. (Gov's Opp'n at 2.)

With respect to step two, however, the government asks that the court exercise its discretion to deny defendant's Motion, noting that defendant: (1) participated in a drug conspiracy of "massive scale" scale, (see id. at 3 (noting that defendant was involved in trafficking "multiple pounds of methamphetamine and kilograms cocaine")); (2) "operat[ed] at the highest levels of [the] conspiracy," (see id. (noting that defendant "used sophisticated coded language to discuss drug trafficking")); and (3) "failed to take responsibility for his crimes" even after being convicted, (see id. (noting that defendant "objected to the entirety of [his] PSR," which "accurately details the extensive drug trafficking" he engaged in)). Having reviewed the documents relevant to defendant's Motion, the court agrees that a sentence reduction is not warranted under step two of Dillon. Accordingly, the court will

deny defendant's Motion.

IT IS THEREFORE ORDERED that defendant's motion for self-representation (Docket No. 1388) be, and the same hereby is, GRANTED. The court's August 23, 2016 Order (Docket No. 1427) and November 23, 2016 Order (Docket No. 1468) are hereby VACATED.

IT IS FURTHER ORDERED that defendant's Motion for sentence reduction pursuant to § 3582(c)(2) (Docket No. 1387) be, and the same hereby is, DENIED.

Dated: December 8, 2016

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE