

statutory mandatory minimum sentence, he is not eligible for a sentencing reduction under § 3582, as the Sentencing Commission has no authority to alter a statutory mandatory penalty."

The United States Sentencing Commission recently amended the base offense levels listed in the drug quantity tables in U.S.S.G. § 2D1.1. In general, amendment 782 reduced the offense levels for certain quantities by two levels. Although "[a] federal court generally 'may not modify a term of imprisonment once it has been imposed,'" Dillon v. United States, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. § 3582(c)), "Congress has authorized courts to modify a term of imprisonment . . . in limited circumstances." United States v. Williams, 551 F.3d 182, 185 (2d Cir. 2009). Specifically, when a defendant is "sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . the court may reduce the term of imprisonment . . . if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(2).

In this case, the drug quantity table used at the time of sentencing yielded a sentencing range of 70 to 87 months. Because Nieves had previously been convicted of a felony drug offense, he was subject to a ten-year mandatory minimum term of imprisonment. See 18 U.S.C. § 841(b)(1)(B). This mandatory minimum sentence exceeded the maximum sentence under the

applicable guideline range, and therefore, the mandatory minimum sentence became the guideline sentence. See U.S.S.G. § 5G1.1(b). Accordingly, the court sentenced the defendant to a mandatory minimum term of 120 months incarceration pursuant to 21 U.S.C. § 841(b)(1)(B).

In applying the mandatory minimum sentence, the court did not sentence Nieves "based on a sentencing range that has subsequently been lowered by the Sentencing Commission." 18 U.S.C. § 3582(c)(2); see also United States v. Williams, 551 F.3d 182, 185 (2d Cir. 2009). Instead, the court based the sentence on the statutory mandatory minimum. Consequently, the court concludes that amendment 782 does not apply to Nieves, and therefore, it does not lower Nieves's applicable guideline range. Nieves remains ineligible for a sentence reduction.

This application is consistent with a policy statement issued by the sentencing commission barring a sentence reduction if a retroactive amendment "does not have the effect of lowering the defendant's applicable guideline range." U.S.S.G. § 1B1.10(a)(2)(B). The second circuit has recognized that the commentary following this policy statement provides further support:

[A] reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. 3582(c)(2) and is not consistent with this policy statement if: . . . an amendment [to the Guidelines range] . . . is applicable to the defendant but the amendment does not

have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g., a *statutory mandatory minimum* term of imprisonment).

United States v. Williams, 551 F.3d 182, 186 (2d Cir. 2009). As noted above, a district court has the authority to reduce a sentence only when doing so is "consistent with applicable policy statements issued by the Sentencing Commission," 18 U.S.C. § 3582(c)(2). Therefore, the court additionally concludes that Nieves is not entitled to a sentence reduction because any reduction would be inconsistent with the policy statement found in U.S.S.G. § 1B1.10(a)(2)(B). The operation of the statutory mandatory minimum 120-month term of imprisonment precludes amendment 782 from having any effect in lowering Nieves's applicable guideline range.

Accordingly, the defendant's motion [doc. no. 784] is DENIED. It is so ordered this 23rd day of December 2014, at Hartford, Connecticut.

Alfred V. Covello

Alfred V. Covello
United States District Judge