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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

United States of America,  
  
Plaintiff,  
  
v.  
  
Allen Ray Jordan,  
  
Defendant.

No. 2:96-cr-475-GEB

**ORDER DENYING DEFENDANT'S MOTION  
FOR SENTENCE REDUCTION UNDER 18  
U.S.C. § 3582 AND AMENDMENT 782  
TO THE UNITED STATES SENTENCING  
GUIDELINES**

Defendant Allen Ray Jordan, a federal prisoner, moves for reduction of his sentence under 18 U.S.C. § 3582(c)(2), arguing that Amendment 782 to the United States Sentencing Guidelines lowers his offense level and authorizes the court to reduce his sentence from 360 months to 324 months. Def. Mot. to Reduce Sentence ("Def. Mot."), ECF No. 414. The United States filed an opposition to the motion. Gov't Opp'n, ECF No. 423. Defendant filed a reply. Reply, ECF No. 424.

Defendant was initially sentenced to life in prison following a jury verdict finding him guilty of the following charges in the Superseding Indictment: Count One, conspiracy to manufacture methamphetamine in violation of 21 U.S.C. §§ 846 and 841(a)(1); Count Two, attempt to manufacture methamphetamine in violation of 21 U.S.C. §§ 846 and 841(a)(1); and Count Three, maintaining a place for manufacture of methamphetamine in violation of 21 U.S.C. § 856. Defendant appealed his sentence and other issues, and the Ninth Circuit vacated his sentence,

1 inter alia, in United States v. Jordan, 291 F.3d 1091, 1094 (9th  
2 Cir. 2002), stating inter alia, “[b]ecause of the Supreme Court’s  
3 shift of direction in Apprendi[ v. New Jersey, 530 U.S. 466  
4 (2000)], and [Ninth Circuit] subsequent precedent, . . . Jordan  
5 is entitled to [sentencing] relief.”

6 Subsequently, the District Court sentenced Defendant to  
7 360 months in prison, as follows: 240 months on Count One, a  
8 consecutive 60 months on Count Two, and a consecutive 60 months  
9 on Count Three. Defendant appealed that sentence and the Ninth  
10 Circuit affirmed. Defendant appealed the affirmance to the  
11 United States Supreme Court, which remanded for resentencing in  
12 light of United States v. Booker, 543 U.S. 220 (2005). On  
13 remand, the sentencing judge took “a fresh look at [the] 3553  
14 [factors, since] Booker made the guidelines advisory” and  
15 ultimately imposed the same 360-month prison sentence. Tr. Of  
16 Sent’g to Def. Allen Ray Jordan held on 1/24/06 before Hon. Frank  
17 C. Damrell, Jr. (“Sent’g Tr.”), 15:17, :19-20 (No. Cr. S-96-475-  
18 FCD), ECF No. 390. Defendant appealed that sentence. It was  
19 affirmed. Defendant then filed a petition for writ of certiori  
20 with the United States Supreme Court for review of the Ninth  
21 Circuit’s affirmance; the petition was denied.

22 Defendant contends in the sentencing reduction motion  
23 sub judice that his 360-month prison sentence should be reduced  
24 under § 3582(c)(2) since Amendment 782 to the Sentencing  
25 Guidelines lowers his offense level and his advisory guideline  
26 imprisonment sentencing range. Section 3582(c)(2) prescribes:

27 The court may not modify a term of  
28 imprisonment once it has been imposed except  
. . . in the case of a defendant who has been

1 sentenced to a term of imprisonment based on  
2 a sentencing range that has subsequently been  
lowered by the Sentencing Commission [and]  
3 upon motion of the defendant . . . .

4 If a defendant qualifies for a sentencing reduction under  
5 § 3582(c), the federal court may reduce a defendant's term of  
6 imprisonment if the reduction is warranted by "the factors . . .  
7 in section 3553(a) . . . [and it] is consistent with applicable  
8 policy statements issued by the Sentencing Commission." 18  
9 U.S.C. § 3582(c)(2). The United States Supreme Court explains in  
10 Dillon v. United States, 560 U.S. 817, 826-827 (2010), when  
11 determining whether a sentence reduction is appropriate:

12 A court must first determine that a reduction  
13 is consistent with § 1B1.10 [of the United  
14 States Sentencing Guidelines] before it may  
15 consider whether the authorized reduction is  
warranted, either in whole or in part,  
according to the factors set forth in  
§ 3553(a).

16 . . . . At step one, § 3582(c)(2) requires  
17 the court to follow the Commission's  
18 instructions in § 1B1.10 to determine the  
19 prisoner's eligibility for a sentence  
20 modification and the extent of the reduction  
21 authorized. Specifically, § 1B1.10(b)(1)  
22 requires the court to begin by "determin[ing]  
23 the amended guideline range that would have  
24 been applicable to the defendant" had the  
25 relevant amendment been in effect at the time  
of the initial sentencing. "In making such  
determination, the court shall substitute  
only the amendments listed in subsection (c)  
for the corresponding guideline provisions  
that were applied when the defendant was  
sentenced and shall leave all other guideline  
application decisions unaffected." Ibid.

26 . . . .

27 At step two of the inquiry, § 3582(c)(2)  
28 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

1 the particular circumstances of the case.  
2 Because reference to § 3553(a) is appropriate  
3 only at the second step of this circumscribed  
4 inquiry, it cannot serve to transform the  
5 proceedings under § 3582(c)(2) into plenary  
6 resentencing proceedings.

7 Defendant contends he qualifies to have his sentence  
8 reduced, as follows:

9 Under the 2011 version of the [Federal  
10 Sentencing G]uidelines [M]anual, Mr. Jordan's  
11 base offense level was 38 because he was  
12 responsible for [1.5 KG or more of  
13 Methamphetamine (actual)]. PSR at p. 7-9. Two  
14 levels were added for possession of a  
15 firearm, and two levels were added for his  
16 testimony at trial constituting obstruction  
17 of justice for a total offense level of 42  
18 [and a sentencing range of 360 months to life  
19 in prison]. PSR at p. 8-9.

20 Under the recent amendment and the 2016  
21 [United States Sentencing Commission  
22 G]uidelines [M]anual, the base offense level  
23 associated with Mr. Jordan's convictions  
24 drops by two, to 36. See U.S.S.G.  
25 § 2D1.1(c)(2) (2016 ed.) Applying the  
26 enhancements his total offense level is now  
27 40 and the amended guideline range is 324-405  
28 months.

Def. Mot. 4:3-12. The United States agrees with this contention,  
stating, "[a]pplying the first step identified in Dillon, the  
defendant is correct that Amendment 782 reduced the guideline  
range applicable in his case [to a new guideline range of 324 to  
405 months]." Gov't Opp'n 3:22-23. The record reveals that  
Defendant "has been sentenced to a term of imprisonment based on  
a sentencing range that has subsequently been lowered by the  
Sentencing Commission" to a new advisory guideline range of 324  
to 405 months; therefore, "the court may reduce [Defendant's]  
term of imprisonment," if a reduction is warranted under "factors  
. . . in section 3553(a) . . . ." 18 U.S.C. § 3582(c)(2).

1           The parties dispute whether Defendant should receive a  
2 reduction under step two of the Dillon analysis. Defendant  
3 argues:

4           A reduction to 324 months is warranted in Mr.  
5 Jordan's case [because t]here are no factors  
6 to suggest that Mr. Jordan should get a  
7 sentence higher than the low end of the  
8 guideline range. Mr. Jordan has been an  
9 exemplary prisoner and has worked in UNICOR  
10 consistently over the past 20 years. See  
11 Attachment A. The requested reduced sentence  
12 still results in a substantial sentence and  
13 will mean his release date will be in  
14 approximately 2019. In light of the reduced  
15 guidelines, a sentence at the low-end of the  
16 new sentencing guidelines range is certainly  
17 sufficient, but not greater than necessary to  
18 meet the goals of 18 U.S.C. §3553.

12 Def. Mot. 4:23, :28-5:6. The United States opposes reducing  
13 Defendant's sentence, arguing:

14           In [applying step two of Dillon to  
15 Defendant's] case, the nature of the offense  
16 conduct, the nature and characteristics of  
17 the defendant, the need to protect the public  
18 from future crimes of the defendant, the  
19 repeated instances of [the District Court's]  
20 imposition of a sentence of 360 months in  
21 prison even after Booker, and the need to  
22 support unwarranted sentencing disparities  
23 all support a sentence of 360 months.

20           The nature of the offense and need to  
21 protect the public are demonstrated in the  
22 defendant's arsenal of firearms, a homemade  
23 hand grenade, and a clandestine fully-  
24 functioning methamphetamine lab at the time  
25 of his arrest. PSR ¶¶ 16-20. This defendant  
26 was not a first time, non-violent offender;  
27 instead, he was a sophisticated large-scale  
28 criminal. Making matters worse, the district  
29 court found that the defendant committed  
30 perjury in his trial in an effort to mislead  
31 the jury. PSR ¶ 20. Indeed, the defendant  
32 already received a windfall based upon  
33 caselaw developments because he initially  
34 received a life sentence. A sentence of 360  
35 months in prison is well within the . . .  
36 defendant's revised guideline range and does  
37 not represent an unreasonable sentence if

1 defendant's convictions occurred today.

2 Gov't Opp'n 4:15-5:4. Defendant replies as follows:

3 The government sets forth no new information  
4 to suggest that Mr. Jordan is not entitled to  
5 application of the reduced guidelines. Most  
6 likely, with everything being equal, Mr.  
7 Jordan today would again receive a low-end  
8 guidelines sentence that equals 27 years in  
9 prison for manufacturing methamphetamines.  
10 There is no reason not to grant him the  
11 reduction that the now-lowered sentencing  
12 guidelines provide retroactively.

13 Indeed, the new information is that Mr.  
14 Jordan, who is now 64 years old, has served  
15 the last 20 years as a model prisoner,  
16 completing the RDAP program, being placed in  
17 the lowest security level camp, and working  
18 for Unicor. See Attachment to Dkt 414. Mr.  
19 Jordan has participated in all programs  
20 available to him and has had no disciplinary  
21 actions while in custody. The information  
22 before the Court demonstrates that Mr. Jordan  
23 has done exactly what was hoped, that he  
24 would take the opportunity of prison time to  
25 rehabilitate.

26 Reply 2:2-12.

27 At the sentencing hearing on remand, the sentencing  
28 judge explained the reason Defendant received the sentence he  
seeks to have reduced, discussed the seriousness of Defendant's  
offenses, and expressed credibility concerns he had about  
Defendant's allocution, as follows:

29 Unfortunately, in my view, the  
30 allocution, your statement, is not as  
31 forthcoming as I would like . . . . I have to  
32 understand what's going on not only at the  
33 prison, what's going on in your mind and  
34 what's going on particularly with respect to  
35 remorse and acknowledgement.

36 . . . .

37 But more importantly, what concerns me  
38 is the comment that you're not a violent  
person. I mean, drugs have been a part of  
your life, but so have weapons. And not just

1 any kind of weapons. You had a virtual little  
2 Army in your house. Multiple weapons,  
3 grenades, loaded weapons. I think 15 or 16  
4 weapons, automatic weapons, hand grenades,  
5 explosives. You had weapons at the site of  
6 the lab . . . . [Y]ou said nothing about that  
7 [in your allocution]. Nothing about the fact  
8 that you had a stolen loaded Ruger Blackhawk,  
9 .357 caliber revolver.

10 I think you also had, again, a semi-  
11 automatic assault weapon with ammunition.  
12 Then you [had a] young boy[, your nephew,]  
13 come[] up with his girlfriend . . . . In  
14 fact, he was involved. [W]hen they [went] to  
15 your house, . . . you and your wife at the  
16 time had four loaded handguns, loaded double-  
17 barrel shotgun, 11 other unloaded handguns  
18 and rifles and ammunition, five grenade  
19 trailing devices with pin activators, a  
20 homemade-fashioned hand grenade consisting of  
21 a grenade trailer placed in a quantity of  
22 black powder and surrounded by duct tape. And  
23 I hear nothing about that. That's one area  
24 that I feel your allocution falls way, way  
25 short.

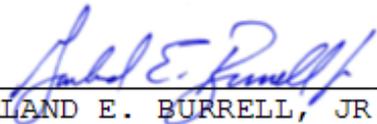
26 And to simply say you're not violent,  
27 sir, is simply not truthful. You are clearly  
28 a person . . . that has [a] type of  
destructive capability and had weapons in the  
past, I think that deserves an explanation  
which I have not received.

18 Sent'g Tr. 32:14-15, 33:5-8, :21-34:22. The sentencing judge's  
19 statements evince his concern about the grave danger Defendant's  
20 criminal ventures posed to the community and Defendant's lack of  
21 remorse and candor about the potential violence involved with his  
22 criminal activities. Defendant appeared oblivious to the serious  
23 risk of harm he posed to others by his possession of multiple  
24 weapons and ammunition, including automatic weapons, five grenade  
25 trailing devices with pin activators, and a homemade-fashioned  
26 hand grenade consisting of a grenade trailer placed in a quantity  
27 of black powder and surrounded by duct tape. However, Defendant  
28 argues his motion should be granted because he has been a model

1 prisoner during his incarceration; specifically, he has completed  
2 the drug abuse program, been placed in a lower security camp, and  
3 has been working in prison. Defendant's post-sentencing  
4 accomplishments are commendable, but they do not warrant reducing  
5 his sentence in light of the following § 3553(a) sentencing  
6 goals, which have paramount importance in determining the  
7 sentence reduction motion: the nature and circumstances of the  
8 offense, the need to protect the public from further crimes of  
9 Defendant, the need to ensure that the sentence affords adequate  
10 deterrence of Defendant and others from engaging in such criminal  
11 activities, and the need to provide Defendant with just  
12 punishment for the offenses.

13           Therefore, Defendant's motion for sentence reduction is  
14 denied.

15 Dated: September 7, 2017

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20 GARIAND E. BURRELL, JR.  
21 Senior United States District Judge  
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