NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 30, 2024*
Decided November 1, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1535

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JUAN CORONA-GONZALEZ,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:08-cr-00034-JRS-MJD-1

James R. Sweeney II,
Judge.

O R D E R

Juan Corona-Gonzalez appeals the district court's denial of his motion for sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i). The district court denied his motion because he did not show that a change in the law created a disparity between his sentence and the one he would receive if sentenced today. We affirm.

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* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Corona-Gonzalez was found guilty by a jury of possessing with intent to distribute and knowingly distributing 500 grams or more of a mixture containing methamphetamine, 21 U.S.C. § 841(a)(1), and possession of a firearm in furtherance of that offense, 18 U.S.C. § 924(c). The government presented evidence at trial that the drugs he trafficked had tested positive for methamphetamine. These tests did not assess the purity of the methamphetamine.

The probation office prepared a presentence investigation report that held Corona-Gonzalez responsible for possessing 316.3 grams of "pure" methamphetamine (from a total of 660.4 grams of a mixture or substance containing a detectable amount of methamphetamine).[†] The purity level of the methamphetamine is consequential under the Sentencing Guidelines because it drives the applicable base offense level. *See* U.S.S.G. § 2D1.1(c).

At sentencing, the district court adopted the findings of the PSR. Corona-Gonzalez's recommended guidelines range for the drug offenses (the firearms offense was calculated separately) was 235 to 293 months' imprisonment: He had a baseline offense level of 36 (34 for possession of more than 150 but less than 500 grams of pure methamphetamine plus an upward adjustment of two for obstruction of justice at his trial), and a criminal history category of III. Corona-Gonzalez did not object to the PSR's findings about the quantity of pure methamphetamine. The court then sentenced him to 300 months' imprisonment—two concurrent 240-month sentences for the drug offenses

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[†] The PSR stated that it derived these figures from a chemical analysis performed by the DEA's North Central Laboratory in Chicago. The PSR's reference to "pure" methamphetamine, however, is confusing in that "pure" is not a classification used in the Guidelines. The Guidelines, instead, rely upon categories of methamphetamine (actual) and methamphetamine (ice). Methamphetamine "actual" refers to the weight of the methamphetamine itself in a mixture. *See United States v. Johnson*, 94 F.4th 661, 663 (7th Cir. 2024); U.S.S.G. § 2D1.1, Notes to Drug Quantity Table (B). Methamphetamine "ice" refers to a mixture containing d-methamphetamine hydrochloride of at least 80% purity. *Id.* § 2D1.1, Notes to Drug Quantity Table (C). Corona-Gonzalez's PSR elsewhere clarifies that it was assessing his offense level based on methamphetamine "actual." Notwithstanding any confusion in the terminology, the way in which the PSR classified the methamphetamine does not affect this appeal because the offense level under methamphetamine "ice" and "actual" is the same. *See United States v. Yates*, 98 F.4th 826, 832–33 (7th Cir. 2024); U.S.S.G. § 2D1.1(c).

plus a consecutive 60 months for the firearms offense. We vacated his sentence for procedural error. *See United States v. Corona-Gonzalez*, 628 F.3d 336 (7th Cir. 2010).

On remand, the district court sentenced him to 288 months in prison. We dismissed his appeal. *See United States v. Corona-Gonzalez*, 452 F. App'x 685 (7th Cir. 2011).

In 2016, Corona-Gonzalez moved to reduce his sentence, *see* 18 U.S.C. § 3582(c)(2), based on Amendment 782 to the Guidelines, which lowered his offense level for the drug offense from 34 to 32, his total offense level from 36 to 34, and his guidelines range from 235 to 293 months to 188 to 235 months. The district court reduced his sentence to 252 months—192 months for the drug offenses and 60 months on the gun charge.

In 2023, Corona-Gonzalez again moved for a sentence reduction under § 3582(c)(1)(A)(i) based on a new policy statement, § 1B1.13(b)(6), which allows certain defendants to seek early release based on intervening changes in law. He asserted that a recent judicial decision, *United States v. Carnell*, 972 F.3d 932 (7th Cir. 2020), was a change in the law that had the effect of invalidating his sentence. In *Carnell*, we held that the government could not rely upon statements from users and police about methamphetamine's purity levels to prove that a defendant dealt or possessed methamphetamine "ice"; such statements, we explained, could not prove purity levels with precision. *Id.* at 941–43. Corona-Gonzalez argued that the statement in his PSR attributing 316.3 grams of "pure" methamphetamine to him was—as in *Carnell*—insufficiently reliable to support his sentence. He also asserted that *Alleyne v. United States*, 570 U.S. 99, 103 (2013), further invalidated his sentence because it required the government at trial to prove purity beyond a reasonable doubt.

The district judge denied the motion. The judge explained that his ultimate conclusion—that Corona-Gonzalez had not identified a change in law that would cause a disparity in his sentence if he were sentenced today—allowed him to sidestep our caselaw holding that new judicial decisions are not extraordinary and compelling reasons for granting compassionate release under § 3582(c)(1)(A), *see, e.g.*, *United States v. Von Vader*, 58 F.4th 369, 371 (7th Cir. 2023); *United States v. King*, 40 F.4th 594, 595 (7th Cir. 2022) (citing *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021)), and the question whether the Sentencing Commission may have exceeded its authority in adopting § 1B1.13(b)(6). With regard to Corona-Gonzalez's reliance on *Carnell*, the judge found the case inapplicable. The evidence we had rejected in *Carnell* to prove the purity

classification of the methamphetamine was not at issue here. Moreover, there was no dispute at Corona-Gonzalez's sentencing about the purity of the methamphetamine attributable to him. As for *Alleyne,* which held that any fact that increases the penalty for a crime beyond the statutory minimum must be submitted to the jury, 570 U.S. at 103, the judge found this case inapplicable too because the purity level of Corona-Gonzalez's methamphetamine did not affect the statutory maximum or minimum penalty to which he was exposed.

On appeal, Corona-Gonzalez first challenges the district court's determination that *Carnell* did not apply. He contends that the PSR's statement that 316.3 of the 660 grams of methamphetamine tested were "pure" is the kind of "vague" description that we criticized in *Carnell* when rejecting methods of proof that could not prove exact purity levels. Because the lab report mentioned in the PSR stated only that the methamphetamine was "pure" (without specifying any percentage of purity), he argues that this evidence was insufficiently reliable to establish that the methamphetamine was at least 80% pure—the baseline level for methamphetamine "ice." *See* U.S.S.G. § 2D1.1, Notes to Drug Quantity Table (C).

Even if we, like the district court, assume that the Commission was within its authority to adopt § 1B1.13(b)(6), *Carnell* would not affect Corona-Gonzalez's sentence because the government did not rely on any of the types of evidence we rejected in that case to prove the purity level of the methamphetamine attributable to him. *Carnell* held that proof of methamphetamine "ice" could not be established merely by a lay person's statement. 972 F.3d at 942–43. But there, we also stated that chemical-analysis testing in a laboratory would be the best way to determine purity levels. *Id.* at 943 (quoting *United States v. Walker*, 688 F.3d 416, 425 n.4 (8th Cir. 2012)). And that is the sort of evidence that the government relied on here. According to the PSR, a chemical analysis of the seized substance determined that 316.3 grams were methamphetamine (actual). And to the extent Corona-Gonzalez seeks to challenge the reliability of the lab report itself, a motion under § 3582 is not the proper vehicle to raise an argument that could have been advanced on direct appeal. *See United States v. Brock*, 39 F.4th 462, 465 (7th Cir. 2022).

Corona-Gonzalez also challenges the district court's conclusion that *Alleyne* did not apply to his case. He asserts that the government failed to meet its burden at trial of proving purity to the jury beyond a reasonable doubt. But because the purity level alters only the calculation of the guidelines range (and not the statutory range of the offense), it may be determined at sentencing by a preponderance of the evidence. *See United States v. Booker*, 543 U.S. 220, 233 (2005); *United States v. Miedzianowski*,

60 F.4th 1051, 1057 (7th Cir. 2023). The government was not required to prove the purity level at trial.

Finally, Corona-Gonzalez asserts that the district court erred by not addressing the sentencing factors under 18 U.S.C. § 3553(a). But the court did not need to reach this step because it found that he had not first identified an extraordinary and compelling reason for a sentence reduction. *See United States v. Newton*, 37 F.4th 1207, 1210 (7th Cir. 2022).

AFFIRMED