NONPRECEDENTIAL DISPOSITION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 15, 2024[*]
Decided November 18, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1662

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

WILFREDO BARRIOS,
Defendant-Appellant.

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

No. 3:02-cr-00002-RLY-CMM-5

Richard L. Young,
Judge.

O R D E R

Wilfredo Barrios appeals the denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). The district court concluded that Barrios failed to

[*] 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).

establish an extraordinary and compelling reason for a reduced sentence. Because the court did not abuse its discretion in denying the motion, we affirm.

In 2003, a jury found Barrios guilty of conspiracy to sell methamphetamine, 21 U.S.C. §§ 841(a)(1), 846, and engaging in a continuing criminal enterprise, § 848(a)–(b). Barrios received 480 months' imprisonment for the first offense. For the second, he received a mandatory life sentence based on the finding that (1) he was a principal administrator, organizer, or leader of the enterprise; and (2) the enterprise involved a threshold quantity or value of drugs. *See* § 848(b).

Barrios first moved for compassionate release in September 2020 based on increased health risks related to the COVID-19 pandemic and his belief that he could not receive a mandatory life sentence under current law. The district court denied that motion and the motion to reconsider that followed. On appeal, we affirmed, concluding in relevant part that Barrios's attempts to benefit from non-retroactive changes in the law were barred by *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021). *United States v. Barrios*, No. 20-2944, 2021 WL 3116052 (7th Cir. July 22, 2021). The district court denied Barrios's next compassionate-release request (styled as a motion to "reinstate") because he again raised only arguments that were barred by *Thacker*.

Most recently, Barrios moved for compassionate release based on the newly enacted Amendment 814 to the Sentencing Guidelines, *see* U.S.S.G. § 1B1.13(b)(6) (effective Nov. 1, 2023). This policy statement allows relief from a sentence that is, in light of current law, "unusually long" and produces "a gross disparity between the sentence being served and the sentence likely to be imposed" now. The court denied Barrios's motion; it concluded that, because 21 U.S.C. § 848(b) still requires a life term for his criminal conduct, there is nothing unusual about the sentence.

Barrios appeals the denial of his motion, which we review for an abuse of discretion. *United States v. Saunders*, 986 F.3d 1076, 1078 (7th Cir. 2021). In relying on U.S.S.G. § 1B1.13(b)(6), he identifies two Supreme Court decisions as relevant changes that, he contends, render his sentence unusually long: *Alleyne v. United States*, 570 U.S. 99 (2013), and *United States v. Booker*, 543 U.S. 220 (2005). He contends that the facts mandating his life sentence were never submitted to a jury, as current law requires. But even assuming Barrios can bring these arguments in a motion for compassionate release—which we need not resolve—he still is not eligible for a reduced sentence based on *Alleyne* or *Booker*.

Barrios's argument that his life sentence is unusually long because it resulted from a mandatory guidelines scheme that has since been held unconstitutional, *see Booker*, 543 U.S. at 245, is a non-starter. His life sentence was mandated by statute, 21 U.S.C. § 848(b), not the Sentencing Guidelines, so for him, *Booker* changed nothing.

Nor did *Alleyne* bring about a change that is relevant to Barrios. *Alleyne* requires that factual findings triggering an enhanced statutory minimum be submitted to a jury to find beyond a reasonable doubt. *See* 570 U.S. at 103. But here the record, which the government supplemented at our request, shows that the jury was instructed on the additional facts it needed to find to convict Barrios under 21 U.S.C. § 848(b), which carried a mandatory minimum sentence of life imprisonment. Because the jury made the required findings for a guilty verdict, Barrios's minimum sentence was not increased based on judge-found facts, and so, for him, *Alleyne* did not change the law in a way that results in an unusually long sentence.

This makes it unnecessary for us to resolve the parties' dispute about whether *Thacker* is consistent with U.S.S.G. § 1B1.13(b)(6). Barrios contends that the district court erroneously relied on *Thacker* because § 1B1.13(b)(6) supplanted our holding that non-retroactive changes in the law cannot be extraordinary and compelling reasons for a reduced sentence. The government urges us to reaffirm *Thacker* and preserves its argument that the policy statement is unconstitutional. We need not weigh in here because Barrios, whose sentence is unaffected by *Booker* and *Alleyne*, cannot benefit from § 1B1.13(b)(6) in any event.

As a final note, the government's briefing relies on information that comes from the verdict forms, jury instructions, and sentencing hearing transcript. When the government filed its brief, those documents were not in the electronic record, which is common in cases that originated before the CM/ECF system. Because the parties did not supply these documents in an appendix, we had to order the government to supplement the record. Parties should be aware that obtaining hard-copy documents outside the electronic record is not a simple task for this court. We remind the parties of their responsibility under Circuit Rule 10(a)(3): "Counsel must ensure, within 21 days of filing the notice of appeal, that all electronic and non-electronic documents necessary for review on appeal are on the district court docket." This is especially true when a party bases its arguments on those documents, as the government did here.

AFFIRMED