

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DARIO PUERTA :
 :
 v. : NO. 3:01CR162 (SRU)
 :
 UNITED STATES OF AMERICA :

RULING ON MOTIONS FOR MODIFICATION OF SENTENCE

On August 1, 2002, Dario Puerta entered a guilty plea to count one of the First Superseding Indictment, charging him with conspiracy to possess with intent to distribute more than five kilograms of cocaine, in violation of 21 U.S.C. §§ 841(b)(1)(A) and 846. On March 20, 2003, the court sentenced Puerta principally to a term of imprisonment of 121 months, followed by a period of four years' supervised release.

Puerta has filed two motions for modification of his sentence. In the first motion (doc. # 215), Puerta argues that the amendment to U.S.S.G. section 2D1.1(a)(3), effective November 1, 2002, sets his base offense level at a maximum of 30. In the second motion (doc. # 220), Puerta argues that he should have been granted the benefit of the "safety valve" provisions of U.S.S.G. § 5C1.2. For the reasons that follow, both of Puerta's motions are denied.

The Court's Guidelines Calculation

At sentencing, the court found Puerta was subject to a base offense level of 32, pursuant to U.S.S.G. § 2D1.1(c)(4) and the fact that he conspired to possess with intent to distribute ten kilograms of cocaine. A three-level upward adjustment under U.S.S.G. § 3B1.1(b) was applied, based on Puerta's role as a manager or supervisor of the criminal activity. Puerta was not granted an adjustment under the safety valve provisions of U.S.S.G. § 5C1.2 because he was a manager

or supervisor of his co-conspirators. See U.S.S.G. § 5C1.2(a)(4). Thus, Puerta's adjusted offense level was 35. Puerta was granted a three-level downward adjustment for acceptance of responsibility under Guideline section 3E1.1, resulting in a total offense level of 32. Puerta had no prior convictions, so he was placed in criminal history category I. His resulting Guidelines sentencing range was 121 to 151 months' incarceration and a four-years-to-life period of supervised release. Puerta was sentenced at the bottom of the Guidelines range.

Puerta's Requested Modifications

Puerta seeks several modifications to his Sentencing Guidelines calculation and ultimately to his sentence. He argues that, under the amendment to Guidelines section 2D1.1(a)(3) effective November 1, 2002, his base offense level cannot exceed 30.¹ Puerta correctly notes that:

The amendment modifies § 2D1.1(a)(3) to provide a maximum base offense level of thirty (30), if the defendant receives an adjustment under § 3B1.2 (Mitigating Role). The maximum base offense level somewhat limits the sentencing impact of drug quantity for offenders who perform relatively low level trafficking functions, have little authority in the drug trafficking organization, and have a lower degree of individual culpability.

Doc. # 215 at 2-3. Puerta also notes that an application note to amended section 2D1.1(b)(6) provides that, for defendants who meet the requirements of the safety valve of section 5C1.2, the reduction in the base offense level called for by section 2D1.1(b)(6) applies even if the defendant is convicted under a statute that carries a mandatory minimum term of imprisonment. See

¹ Puerta incorrectly believes that the amendment to section 2D1.1 was not in effect at the time of his sentencing. Puerta was sentenced on March 20, 2003, at which time the November 1, 2002 edition of the Sentencing Guidelines, which includes the amendment in question, was in effect. Accordingly, it is unnecessary to determine whether the Guideline amendment should be applied to Puerta retroactively, as he argues it should.

Application Note 21 to U.S.S.G. § 2D1.1.

Puerta argues that he is eligible for the safety valve adjustment in his base offense level, and that the mandatory minimum term of ten years' imprisonment does not apply to him, because he satisfied all of the requirements under section 5C1.2. On this point, Puerta believes that he was denied safety valve treatment because the court found that he did not satisfy section 5C1.2(5), which requires that the defendant have "truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan." Puerta argues that his pre-sentence interview with the Probation Officer satisfies the requirement set forth in section 5C1.2(5).

In sum, Puerta argues that his Sentencing Guidelines calculation should start with a base offense level of 30, that he should receive a two-level reduction under section 3B1.2, a two-level reduction under section 2D1.1(b)(6), and a three-level reduction under section 3E1.1, resulting in a base offense level of 23. At that level, Puerta's Guideline imprisonment range would be 46 to 57 months.

None of Puerta's arguments has merit. He is not eligible to have his base offense level limited to 30 under section 2D1.1 because he did not receive a mitigating role adjustment under section 3B1.2. To the contrary, Puerta received a three-level upward adjustment in this offense level because he was a manager or supervisor of his co-conspirators. See U.S.S.G. § 3B1.1(b). Accordingly, Puerta does not qualify for the level 30 cap under amended section 2D1.1(a)(3).

Nor does Puerta qualify for safety valve treatment under section 5C1.2. Puerta was denied the safety valve, not because he had not complied with the requirement in section 5C1.2(5) that he truthfully provide the Government all information and evidence he has

concerning the offense of conviction, but rather because he was a manager or supervisor in the conspiracy and thus ineligible for safety valve treatment under section 5C1.2(a)(4). For this reason, too, Puerta is ineligible for a mitigating role adjustment under section 3B1.2. Finally, Puerta was already awarded a three-level downward adjustment for acceptance of responsibility under section 3E1.1.

Accordingly, Puerta's Sentencing Guideline range was correctly calculated at sentencing and his motions to modify his sentence (docs. ## 215, 220) are both denied.

It is so ordered.

Dated at Bridgeport, Connecticut this 20th day of January 2004.

/s/ Stefan R. Underhill

Stefan R. Underhill

United States District Court