

United States Court of Appeals
For the Eighth Circuit

No. 18-2795

United States of America

Plaintiff - Appellee

v.

Kevin Gene Schimerowski

Defendant - Appellant

Appeal from United States District Court
for the Northern District of Iowa - Sioux City

Submitted: April 10, 2019

Filed: April 15, 2019

[Unpublished]

Before ERICKSON, BOWMAN, and GRASZ, Circuit Judges.

PER CURIAM.

Kevin Schimerowski, who pleaded guilty pursuant to a Federal Rule of Criminal Procedure 11(c)(1)(C) plea agreement and was sentenced in accordance with

that plea agreement, appeals after the district court¹ denied his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2). His motion was based on Amendment 782 to the Sentencing Guidelines, and relied on Hughes v. United States, 138 S. Ct. 1765 (2018) (clarifying that Rule 11(c)(1)(C) plea agreements do not foreclose eligibility for § 3582(c)(2) relief based on retroactively lowered Guidelines ranges). Schimerowski's appointed counsel has filed a brief suggesting that the district court abused its discretion in denying a sentence reduction. Counsel has also moved for leave to withdraw.

We conclude that the district court did not abuse its discretion in denying Schimerowski a sentence reduction under section 3582(c)(2). The district court concluded that it would have imposed the same prison term, even without the Rule 11(c)(1)(C) plea agreement, in light of Schimerowski's extensive criminal history, as well as other 18 U.S.C. § 3553(a) factors. See Hughes, 138 S. Ct. at 1778 (if district court concludes that it would have imposed same sentence even if defendant had been subject to lower Guidelines range, then court retains discretion to deny relief under § 3582(c)(2)); cf. United States v. Burrell, 622 F.3d 961, 964 (8th Cir. 2010) (district court is not required to give lengthy explanation of § 3553(a) factors in § 3582(c)(2) proceeding, but must give some explanation for its decision). Accordingly, we affirm. In addition, we grant counsel's motion to withdraw.

¹The Honorable Mark W. Bennett, United States District Judge for the Northern District of Iowa, now retired.