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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BRANDY D. HILTON,

Defendant-Appellant.

Nos. 25-5228/5835

Appeal from the United States District Court for the Eastern District of Tennessee at Greeneville.
No. 2:20-cr-00009-1—J. Ronnie Greer, District Judge.

Argued: July 28, 2026

Decided and Filed: September 1, 2026

Before: GILMAN, GRIFFIN, and READLER, Circuit Judges.

COUNSEL

ARGUED: Erin P. Rust, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Chattanooga, Tennessee, for Appellant. Debra A. Breneman, UNITED STATES ATTORNEY'S OFFICE, Knoxville, Tennessee, for Appellee. **ON BRIEF:** Erin P. Rust, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Chattanooga, Tennessee, for Appellant. Debra A. Breneman, UNITED STATES ATTORNEY'S OFFICE, Knoxville, Tennessee, for Appellee.

OPINION

READLER, Circuit Judge. In theory, federal sentencing statutes, together with the Sentencing Guidelines, serve to channel the sentencing process in an orderly way. In practice,

however, that labyrinth of requirements is sometimes difficult to navigate, leading to good faith disagreements over its commands. Today's case is a good example.

A federal sentencing statute allows a district court to modify a defendant's term of imprisonment when the defendant "has been sentenced . . . based on a sentencing range that has subsequently been lowered by the Sentencing Commission," so long as certain other conditions are met. 18 U.S.C. § 3582(c)(2). That provision became of interest to Brandy Hilton when the Sentencing Commission, following her sentencing, amended how criminal-history points are calculated and made that amendment retroactive, *see* U.S. Sent'g Guidelines Manual, app. C, amend. 821 (U.S. Sent'g Comm'n 2023); *id.* amend. 825. Accordingly, Hilton, invoking § 3582(c)(2), asked the district court to reduce her sentence. The district court twice denied that request on the grounds that Hilton's original sentence was not based on her Guidelines sentencing range, a threshold requirement for relief under § 3582(c)(2).

Hilton appealed both denials, resulting in these consolidated appeals. Based on our understanding of the relevant sentencing factors at play, we conclude that Hilton's sentence was based on her Guidelines range and that Amendment 821 subsequently lowered that range, meaning she met at least the initial requirement for a sentence modification. We thus vacate the district court's order in case No. 25-5228 and remand to allow the district court to consider whether Hilton is otherwise eligible for a reduced sentence. Because that outcome resolves Hilton's second appeal as well, we dismiss her appeal in case No. 25-5835 as moot.

I.

A. We begin with some necessary background on the way a district court calculates Guidelines sentencing ranges in cases like Hilton's. The court starts by calculating the base offense level for the defendant's convictions and applying any necessary adjustments to arrive at the defendant's final offense level. U.S. Sent'g Guidelines Manual § 1B1.1(a)(1)–(5) (U.S. Sent'g Comm'n 2025). Next, the court calculates the defendant's criminal-history category. *Id.* § 1B1.1(a)(6). Using those two familiar inputs—offense level and criminal-history category—the district court determines an initial Guidelines sentencing range. *Id.* § 1B1.1(a)(7).

From there, another critical sentencing component comes into play: The district court evaluates whether the defendant's convictions carry any applicable statutory mandatory minimums or maximums. *Id.* § 1B1.1(a)(8). When the defendant is subject to an applicable statutory minimum, that legislative command overrides any portion of the initial Guidelines range below that minimum. *Id.* § 5G1.1(b), (c)(2). Yet the court's work does not always end there. If the defendant's conviction carries a statutory minimum that must be imposed independent of any other term of imprisonment, then the district court adds the statutorily mandated sentence on top of the initial Guidelines range to arrive at the final range. *Id.* § 5G1.2(a). Applied together, §§ 5G1.1 and 5G1.2 thus can result in a Guidelines sentencing range above what the defendant would otherwise face based on her offense level and criminal-history category considerations alone.

To see how this collection of sentencing directives works in practice, consider the example of a defendant who committed two offenses, both of which carry 60-month mandatory minimum sentences that must run consecutively. Assume also that she has an offense level of 23 and is in criminal-history category II. That offense level in conjunction with that criminal-history category would dictate an initial Guidelines range of 51 to 63 months. *See id.* § 5A. But the 60-month mandatory minimum for the first conviction cuts off the bottom portion of that initial range, making her Guidelines range for that offense 60 to 63 months. *See id.* § 5G1.1(c)(2). Next, the 60-month consecutive sentence must be added on top, which results in a final Guidelines sentencing range of 120 to 123 months. *See id.* § 5G1.2(a).

There is a notable exception to these statutory mandatory minimums. Congress has authorized a district court to impose a sentence below a statutory minimum "to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense." 18 U.S.C. § 3553(e). Where the government believes a defendant has satisfied those criteria, it can move for the reduction during sentencing, *see* U.S. Sent'g Guidelines Manual § 5K1.1, or it can employ Federal Rule of Criminal Procedure 35(b) to ask the district court to reduce the sentence after the fact.

B. With this background in mind, we turn to Hilton's case. Hilton pleaded guilty to one count of possession with intent to distribute five grams or more of methamphetamine, in

violation of 21 U.S.C. § 841(a)(1), (b)(1)(B), and one count of possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A). At the time of Hilton's original sentence, § 4A1.1(d) of the Sentencing Guidelines added two criminal-history points to Hilton's sentencing formula because she committed her crimes while under a prior sentence. *See* U.S. Sent'g Guidelines Manual § 4A1.1(d) (U.S. Sent'g Comm'n 2021). That resulted in a criminal-history category of IV. Her offense level was 21, so the initial Guidelines range was 57 to 71 months.

Complicating matters, however, was the fact that both counts carried statutory mandatory minimums. Her drug conviction had a 60-month mandatory minimum. *See* 21 U.S.C. § 841(b)(1)(B). Her gun conviction likewise had a 60-month mandatory minimum, with the added wrinkle that the sentence must be served consecutively to any other punishment imposed on the defendant. *See* 18 U.S.C. § 924(c)(1)(A)(i). So the district court had to apply Guidelines §§ 5G1.1(c)(2) and 5G1.2(a). Recall that these provisions instructed the district court to make the mandatory minimum for the drug offense the bottom value for the Guidelines range and then add the gun offense's mandatory minimum to that range to arrive at the final sentencing range. Those measures resulted in a new Guidelines sentencing range of 120 to 131 months (60 to 71 months + 60 months). The district court imposed a sentence of 120 months.

One year later, the government moved to reduce Hilton's sentence under Rule 35(b) because she had provided substantial assistance in a subsequent investigation and prosecution. For purposes of modifying Hilton's sentence, the government asked for what it described as a one-level sentence reduction, resulting in a Guidelines range of 100 to 125 months. The district court agreed and resentenced Hilton to 100 months.

Enter now the United States Sentencing Commission. Following Hilton's resentencing, the Sentencing Commission issued Amendment 821, which it rendered retroactive in Amendment 825. Amendment 821 changed how a district court would calculate Hilton's criminal-history score as follows: Had she been sentenced following Amendment 821's adoption, her criminal-history category would have been III instead of IV. *See* U.S. Sent'g Guidelines Manual, app. C, amend. 821. That development would put her Guidelines range for the drug charge at 46 to 57 months, which is below the mandatory minimum of 60 months.

Taking her recalculated range together with the other mandatory 60 months for her gun offense, Hilton's new Guidelines range would have been a flat 120 months had she been sentenced originally under Amendment 821, rather than 120 to 131 months, the range calculated at her initial sentencing. *See* U.S. Sent'g Guidelines Manual §§ 5G1.1(a), 5G1.2(a).

Based on this change in law, Hilton filed a pro se motion to reduce her sentence. She reasoned that her Rule 35(b) reduction took her mandatory minimums out of the picture, so her Guidelines range should now be 106 to 117 months, which, when coupled with the previous 20-month reduction she received for substantial assistance, would create a new Guidelines range of 86 to 97 months. Accordingly, she asked the district court to impose a new sentence of 86 months. The district court denied the motion. It viewed Hilton's original sentence as having been based on the statutory minimums and not a Guidelines range, so relief was unavailable per § 3582(c)(2). Hilton filed a motion for reconsideration, which the district court likewise denied. Hilton then filed the appeal in case No. 25-5228.

While that appeal was pending, the federal public defender intervened on Hilton's behalf. Counsel filed a new motion for a sentence reduction, making the same arguments that Hilton originally made. Because Hilton's earlier appeal divested the district court of jurisdiction, counsel also asked the district court to make an indicative ruling under Federal Rule of Criminal Procedure 37 and Federal Rule of Appellate Procedure 12.1. The district court deemed that request an untimely motion for reconsideration, which it denied. Hilton timely appealed that order as well, which became case No. 25-5835.

II.

To be eligible for a sentence reduction, a defendant must navigate 18 U.S.C. § 3582(c)'s gatekeeping function. Among the hurdles the defendant must clear is § 3582(c)(2), which precludes a district court from modifying a term of imprisonment unless several conditions are met. To start, the defendant must demonstrate that she was "sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." If so, the district court must then "consider the factors set forth in" 18 U.S.C. § 3553(a) to assess whether those factors support a sentence reduction. If they do, and if "such a

reduction is consistent with applicable policy statements issued by the Sentencing Commission," 18 U.S.C. § 3582(c)(2), then the district court may modify the defendant's sentence.

In Hilton's case, her effort to obtain a modification faced obstacles from the start. In considering her request, the district court concluded that Hilton's sentence was not "based on a sentencing range that has subsequently been lowered by the Sentencing Commission," leaving her ineligible for a sentence reduction. *Id.* We review the district court's determination that a defendant is not eligible for a sentence reduction under § 3582(c)(2) de novo. *United States v. Watkins*, 625 F.3d 277, 280 (6th Cir. 2010) (citing *United States v. Curry*, 606 F.3d 323, 327 (6th Cir. 2010)).

A. We begin with § 3582(c)(2)'s threshold inquiry—whether Hilton's sentence was "based on a sentencing range." 18 U.S.C. § 3582(c)(2). And in this context, we start from the general understanding that the Guidelines sentencing range is typically the basis for a sentence. *See Hughes v. United States*, 584 U.S. 675, 686 (2018). A district court is thus required to at least consider the Guidelines range as the "starting point" in the process of selecting a sentence. *Id.* (quoting *Peugh v. United States*, 569 U.S. 530, 542 (2013)) (citing *Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016)). So even where a judge ultimately varies from the Guidelines range, that range was still "a relevant part of the analytic framework the judge used to determine the sentence." *Id.* at 687 (quoting *Freeman v. United States*, 564 U.S. 522, 530 (2011) (plurality opinion)).

Here, all agree that the district court properly calculated the Guidelines range for Hilton's initial sentence (120 to 131 months). From there, the district court sentenced Hilton to a term of imprisonment within that range (120 months).

Hilton's current sentence is likewise based on her Guidelines range. When the government asked the district court for a sentence reduction under Rule 35(b) from the 120-month sentence Hilton was then serving, it couched its request in Guidelines range terms. Specifically, it asked for a "one level reduction to a sentencing guideline range of 100 to 125 months." R. 53, PageID 283. The district court echoed this Guidelines-range focus by announcing that it was applying a "one-level reduction," resulting in "an effective guideline

range of 100 to 125 months." R. 54, PageID 285. Taken together, these statements demonstrate that both the government and the district court alike understood the starting point for the Rule 35(b) reduction to be Hilton's original Guidelines range. And when a "judge uses the sentencing range as the beginning point to explain the decision to deviate from it," § 3582(c)(2)'s "based on" requirement is satisfied. *Hughes*, 584 U.S. at 686 (quoting *Molina-Martinez*, 578 U.S. at 199).

B. Having established that Hilton's sentence was "based on a sentencing range," we next ask whether Amendment 821 "lowered" Hilton's Guidelines sentencing range. 18 U.S.C. § 3582(c)(2). In this case, the Guidelines themselves answer that question.

Section 1B1.10 of the Guidelines provides special guidance on sentence reductions resulting from sentencing amendments. The Section instructs the district court to recalculate Hilton's Guidelines range as if the relevant amendment had been in effect at the time of the sentence, and then to use that recalculated range to determine if the range has been lowered. U.S. Sent'g Guidelines Manual § 1B1.10(b)(1). Notable here is that when a defendant (like Hilton) would otherwise be subject to a mandatory minimum but for the government's prior motion for a sentence reduction due to substantial assistance, the post-amendment Guidelines range is calculated *without* regard to the mandatory minimum. *Id.* § 1B1.10(c). In other words, when a defendant has previously received a Rule 35(b) reduction, any mandatory minimums fall out of the picture when the sentencing range is recalculated.

How does this policy statement work in Hilton's case? Following the adoption of Amendment 821, which reduced Hilton's criminal-history category from IV to III, her sentencing range would be 106 to 117 months, if not for the mandatory minimums (which would make it 120 months flat). But because Hilton received a reduction under Rule 35(b), § 1B1.10(c) tells the sentencing court to disregard the mandatory minimums and consider only the newly calculated Guidelines range. That makes Hilton's new, post-amendment range 106 to 117 months, which is indisputably lower than 120 to 131 months.

Confirming this understanding of the Guidelines is application note 4(B), which offers an example almost identical to Hilton's situation. *See id.* § 1B1.10 cmt. n.4(B). Note 4(B)

considers a defendant whose Guidelines range would be 108 to 135 months but for a mandatory minimum of 120 months, which makes the lower end of the range 120 months (much like Hilton's). In response to a substantial-assistance motion, the district court imposes a sentence of 90 months. Following the imposition of that sentence, the Guidelines are amended, with the amendment serving to lower the defendant's new range to 87 to 108 months but for the 120-month mandatory minimum (again, much like the facts here). But because the defendant previously received a substantial-assistance reduction, the application note explains that § 1B1.10(c) instructs that 87 to 108 months is the relevant Guidelines range, not 120 months. So too for Hilton—her relevant Guidelines range is now 106 to 117 months, not 120 months.

An application note, we recognize, is not binding on us when it does more than simply "interpret" a Guideline itself. *United States v. Havis*, 927 F.3d 382, 386 (6th Cir. 2019) (en banc) (per curiam), *superseded on other grounds by* 88 Fed. Reg. 28,254, 28,275–76 (May 3, 2023). After all, the Guidelines commentary cannot overcome a Guideline's plain text. *See United States v. Riccardi*, 989 F.3d 476, 486 (6th Cir. 2021). But here, § 1B1.10(c)'s text is clear, with the application note merely confirming that § 1B1.10(c) applies to Hilton in the way that she claims it does. The commentary, in other words, does not attempt to "add" impermissibly to the text. *See Havis*, 927 F.3d at 386. So we have no hesitation in viewing application note 4(B) as simply reinforcing the notion that Amendment 821 lowered Hilton's sentencing range.

All told, Hilton was "sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by" Amendment 821. 18 U.S.C. § 3582(c)(2). That requirement in § 3582(c)(2) thus poses no bar to resentencing.

C. The government resists this conclusion in multiple respects.

1. It first contends that Hilton's sentence was based on her statutory mandatory minimums and Rule 35(b) motion, not a Guidelines sentencing range. But at every turn, the district court discussed Hilton's sentence and Rule 35(b) reduction in Guidelines terms, noting that it was selecting a within-Guidelines initial sentence and then reducing Hilton's sentence by one Guidelines offense level. And the government has pointed to nothing in the record to

suggest that this case reflects the "exception to the general rule that a defendant's Guidelines range is both the starting point and a basis for h[er] ultimate sentence." *Hughes*, 584 U.S. at 686. So we see no reason to treat the reduction as the unusual one that was not based on a Guidelines sentencing range. Confirming as much, at oral argument the government agreed that had Hilton received a 121-month sentence coupled with a Rule 35(b) reduction, she would satisfy § 3582(c)(2)'s "based on" requirement. The government's interpretation here would thus have the odd consequence of foreclosing a sentence reduction for Hilton because the district court coincidentally gave her the bottom of her Guidelines sentencing range. It is difficult to reconcile that approach with either logic or the text of § 3582(c)(2).

The government responds by invoking *Koons v. United States*, 584 U.S. 700 (2018). There, the Supreme Court held that a sentence was not "based on" a Guidelines sentencing range when the mandatory minimum sentence was wholly above the top of the Guidelines range. *See* 584 U.S. at 705; *see also United States v. Koons*, 850 F.3d 973, 975 (8th Cir. 2017) (explaining that one defendant's initial Guidelines range was 168 to 210 months, but he faced a statutory minimum of 240 months). And because Hilton had statutory minimums that cut off the lower part of what would otherwise be her Guidelines range, the government concludes that *Koons* bars relief. Not quite. "*Koons* contemplates cases, unlike here, where a congressional requirement—like a mandatory minimum—dictates disregard of the advisory range. The mandatory minimum, in effect, becomes the new range." *United States v. Payne*, No. 24-5353, 2025 WL 475225, at *5 (6th Cir. Feb. 12, 2025). Yet unlike in *Koons*, the district court here did not disregard the Guidelines range. True, the mandatory minimums placed a lower bound on the sentencing range. But the district court could still have picked a higher sentence and been within the Guidelines range. That was not a possibility in *Koons*, where the mandatory minimum wholly supplanted the Guidelines range. *Koons* is thus materially distinguishable from today's circumstances.

2. That leaves the government to argue that Amendment 821 did not in fact lower Hilton's Guidelines sentencing range. To its mind, Hilton's statutory minimums remain in play, so her Guidelines range is a flat 120 months. And so long as the bottom value of a sentencing range does not decrease, the range has not been lowered.

We can quickly resolve this contention. Again, § 1B1.10(c) instructs the district court to disregard the statutory minimums when recalculating Hilton's post–Amendment 821 Guidelines range. As a result, we are not bound by the 120-month minimums.

The government responds by suggesting that *Koons* silently overruled § 1B1.10(c), meaning we cannot apply it here. Once again, the government overreads *Koons*. *Koons* was a case decided solely on the "based on" prong of § 3582(c)(2) and thus left alone § 1B1.10(c). 584 U.S. at 707 (concluding that "because petitioners do not satisfy § 3582(c)(2)'s threshold 'based on' requirement," § 1B1.10(c) did not come into play). Yet Hilton's sentence, unlike the one in *Koons*, was based on a Guidelines sentencing range. For these reasons, *Koons* has no impact on § 1B1.10(c)'s applicability when we arrive at the question of whether Amendment 821 lowered Hilton's sentence.

Nor, contrary to the government's suggestion, does § 1B1.10(c) run afoul of Congress's statutorily prescribed mandatory minimums. We recognize the important restraint on the Commission's "significant discretion" that it "act consistently with [a] statute's plain language," including a mandatory minimum. *United States v. Bricker*, 135 F.4th 427, 443 (6th Cir. 2025) (citation modified). That said, it bears noting that Congress has already authorized the district court to go below the mandatory minimums for a defendant's substantial assistance. *See* 18 U.S.C. § 3553(e). So knowing that § 3553(e) tells the district court that it can sentence a defendant below the statutory minimums, the court then looks to § 1B1.10(c) simply to understand how to calculate the new Guidelines range. We therefore decline the government's invitation to be the first circuit to invalidate § 1B1.10(c) on *Koons* grounds.

* * *

Because the district court concluded that Hilton's sentence was not based on a subsequently lowered sentencing range, it did not consider whether a reduced sentence was warranted based on the § 3553(a) factors and relevant Sentencing Commission policy statements. We leave it to the district court to consider on remand whether these other considerations bar Hilton's request for a reduced sentence. In sum, we vacate the district court's order denying Hilton's initial motion.

III.

As a final matter, the parties dispute whether the district court was correct to dismiss Hilton's second motion for a reduced sentence as untimely. But because both motions made the same argument for resentencing based on Amendment 821, we need not decide this issue; our resolution of Hilton's first motion is enough to decide this case. We therefore dismiss Hilton's appeal of the denial of her second motion as moot. *See Sueing v. Palmer*, 503 F. App'x 354, 358 (6th Cir. 2012); *cf. Coal. to Def. Affirmative Action v. Granholm*, 473 F.3d 237, 243, 253 (6th Cir. 2006) (dismissing a mandamus petition as moot after resolving a stay motion requesting the same relief).

* * * * *

We vacate the district court's order in case No. 25-5228 and remand to allow the district court to consider in the first instance whether Hilton is otherwise eligible for resentencing under § 3582(c)(2). We dismiss the appeal in case No. 25-5835 as moot.