ARMSTRONG V. UNITED STATES: ELEVENTH CIRCUIT JOINS SISTER CIRCUITS IN HOLDING A 18 U.S.C. § 3582(C) SENTENCE REDUCTION DOES NOT CONSTITUTE A DE NOVO RESENTENCING

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In *Armstrong v. United States*, the U.S. Court of Appeals for the Eleventh Circuit addressed whether a sentence reduction pursuant to 18 U.S.C. § 3582(c) constitutes a new, intervening judgment and thus acts as a de novo resentencing.[1] If the court held that § 3582(c) did in fact constitute a de novo resentencing, then the appellant potentially would not have been barred from bringing his second or successive 28 U.S.C. § 2255 habeas petition.[2] Although surrounding sister circuits had considered this same question, *Armstrong* was the Eleventh Circuit's first opportunity.[3] Therefore, the *Armstrong* decision provides a unique glimpse into the court's analysis regarding a case of first impression within its circuit.

In 2012, appellant Charles Armstrong pleaded guilty to three counts: "conspiracy to distribute and to possess with the intent to distribute marijuana," "possession with the intent to distribute marijuana," and "possession of a firearm by a convicted felon . . . ."[4] The district court sentenced Armstrong to concurrent sentences of 190 months for the drug counts and 120 months for the firearm count, which were within the recommended sentencing range of the 2012 United States Sentencing Guidelines (the "Guidelines").[5] Armstrong appealed, but the Eleventh Circuit affirmed his conviction and sentence.[6] Shortly after June of 2014, Armstrong filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence.[7] Armstrong based his § 2255 petition on ineffective assistance of counsel at both the trial and appellate levels.[8]

After Armstrong's sentencing, the United States Sentencing Commission (the "Sentencing Commission") issued Amendment 782 to the Guidelines, which "reduced the base offense level for Armstrong's crimes

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[1] Armstrong v. United States, 986 F.3d 1345, 1347 (11th Cir. 2021); 18 U.S.C. § 3582(c).

[2] *Armstrong*, 986 F.3d at 1347; 28 U.S.C. § 2255.

[3] *Armstrong*, 986 F.3d at 1350.

[4] *Id.* at 1347.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

from 135 to 68 months."[9] Generally, a federal court is prohibited from modifying a sentence once it has been ordered, but 18 U.S.C. § 3582(c)(2) is a congressionally created exception to this general rule.[10] Under § 3582(c)(2), a district court may reduce a defendant's sentence when the defendant "has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission."[11] Therefore, pursuant to the Sentencing Commission's Amendment 782, the district court properly reduced Armstrong's sentence *sua sponte*.[12] The district court then proceeded to deny Armstrong's § 2255 habeas petition that he filed in 2014.[13] Following the district court's denials, the Eleventh Circuit denied Armstrong a Certificate of Appealability.[14] Armstrong proceeded to file a second § 2255 habeas petition in 2018, arguing, among other things, that his 2015 sentence reduction was a new, intervening judgment.[15] The district court disagreed with Armstrong's contentions and dismissed Armstrong's 2018 habeas petition, finding the petition to be "second or successive," rather than a new, intervening judgment.[16] After denying Armstrong's Certificate of Appealability, Armstrong appealed a second time.[17]

On appeal, the Eleventh Circuit reviewed de novo whether a sentence reduction under 18 U.S.C. § 3582(c) comprises a new, intervening judgment pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").[18] Before a petitioner can file a second or successive § 2255 petition, AEDPA requires that the petitioner first receive an appellate court order, which authorizes the district court to consider this subsequent petition.[19] In circumstances where the petitioner lacks this appellate order, the district court must dismiss the subsequent § 2255 petition for jurisdictional reasons.[20] Therefore, the district court properly followed AEDPA's rules and dismissed Armstrong's second § 2255 petition as unauthorized because the Eleventh Circuit had not provided an authorization for the district court to consider his second § 2255 petition.[21] Armstrong

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[9] *Armstrong*, 986 F.3d at 1347.
[10] *Id.* at 1348.
[11] *Id.* at 1347–48 (quoting 18 U.S.C. § 3582(c)(2)).
[12] *Id.* at 1348.
[13] *Id.*
[14] *Id.*
[15] *Armstrong*, 986 F.3d at 1348.
[16] *Id.*
[17] *Id.*
[18] *Id.*; AEDPA, Pub. L. No. 104-132, 110 Stat. 1214 (1996).
[19] *Armstrong*, 986 F.3d at 1348.
[20] *Id.*
[21] *Id.* at 1347.

argued, however, that the district court's dismissal was incorrect under *Magwood v. Patterson*.[22] Armstrong reasoned that under *Magwood*, his 2015 sentence reduction was a new and intervening judgment that prevented his 2018 § 2255 petition from being "second or successive."[23]

Although the Supreme Court in *Magwood* did not address petitions under § 2255, the Court did address whether AEDPA's appellate requirements for second petitions applied to defendants who filed second or successive § 2254 petitions that attacked a second or intervening judgment.[24] Ultimately, the Supreme Court held in *Magwood* that § 2254 petitions attacking the intervening judgment would not be considered "second or successive" if that new judgment occurs between the two habeas petitions.[25] Following the Supreme Court's decision, the Fifth and Seventh Circuits applied *Magwood* to cases in which defendants filed § 2255 motions.[26] Relying on both Supreme Court and Eleventh Circuit authority, the court here rejected Armstrong's argument that he was similar to *Magwood*.[27] Unlike *Magwood*, Armstrong was not resentenced, and he failed to show that his original sentence violated the Constitution.[28] First, the court relied on the Supreme Court's precedent that, rather than constituting an absolute resentencing proceeding, a § 3582(c) reduction is merely a sentence adjustment to the prior final sentencing.[29] Second, the Eleventh Circuit relied on its own precedent affirming the rule that a § 3582(c)(2) sentence adjustment is not a de novo resentencing.[30]

When applying the prior precedents to Armstrong's case, the court distinguished Armstrong's and Magwood's circumstances.[31] In *Magwood*, the sentencing court reviewed evidence again during his full resentencing, which left room for the sentencing court to potentially commit the same or new errors against Magwood.[32] In a § 3582(c)(2) sentence modification, however, the scope of the modification is limited to a range adjustment.[33] Unlike the situation in *Magwood*, the district court does not make new findings by reviewing the evidence in a § 3582(c) sentence modification like

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[22] *Id.* at 1348 (citing Magwood v. Patterson, 561 U.S. 320 (2010)).
[23] *Id.*
[24] *Id.* (citing *Magwood*, 561 U.S. at 330–31).
[25] *Armstrong*, 986 F.3d at 1349 (citing *Magwood*, 561 U.S. at 341–42).
[26] *Id.* (citing United States v. Jones, 796 F.3d 483 (5th Cir. 2015); White v. United States, 745 F.3d 834 (7th Cir. 2014)).
[27] *Id.*
[28] *Id.*
[29] *Id.* (citing Dillon v. United States, 560 U.S. 817, 825–26 (2010)).
[30] *Id.* (citing United States v. Moreno, 421 F.3d 1217, 1220 (11th Cir. 2005)).
[31] *Armstrong*, 986 F.3d at 1349.
[32] *Id.* (citing Magwood v. Patterson, 561 U.S. 320, 339 (2010)).
[33] *Id.* at 1349–50.

Armstrong's.[34] Therefore, the potential for introducing new errors or repeating the same errors is greatly diminished in § 3582(c)(2) sentence modifications when compared with a full resentencing.[35]

Continuing to bolster its conclusion that § 3582(c) is merely a range adjustment rather than a new judgment, the court referenced its previous holding in *Murphy v. United States*.[36] Similar to Armstrong's appeal, *Murphy* involved a § 3582(c)(1)(B) sentence modification.[37] Section 3582(c)(1)(B) "allows a court to reduce a sentence pursuant to Federal Rule of Criminal Procedure 35(b) when a defendant, after sentencing, provides substantial assistance in the government's investigation or prosecution of another person."[38] Although the court's decision in *Murphy* concerned a different § 3582(c) subsection, the *Murphy* court similarly considered whether, under AEDPA's statute of limitations standards, the Rule 35(b) sentence modification constituted a new, intervening judgment.[39] The *Murphy* court ultimately concluded that a Rule 35(b) sentence reduction does not adjust the time clock for AEDPA's statute of limitations, because the sentence reduction does not invalidate, replace, or affect the finality of the defendant's initial sentence.[40] In forming this conclusion, the court reasoned that, despite the fact that a court may modify a sentence, the initial sentence "*constitutes a final judgment for all other purposes*," which in this case included the AEDPA statute of limitations.[41] In assessing Armstrong's argument, the court found that § 3582(b)'s express language made *Murphy* applicable to Armstrong, as well as to any other sentence modification under § 3582(c).[42] Therefore, *Murphy* reinforced the court's conclusion that a § 3582(c) modification does not constitute a new, intervening judgment under AEDPA's statute of limitations.[43]

Ultimately, the Eleventh Circuit held in *Armstrong* that a § 3582(c) sentence reduction is not a de novo resentencing because it is merely a modification that does not affect the finality of the initial sentence.[44] Because Armstrong's resentencing pursuant to § 3582(c) was not a "new, intervening judgment," he was required to obtain the Eleventh Circuit's authorization

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[34] *Id.*
[35] *Id.* at 1349.
[36] *Id.* at 1350 (citing Murphy v. United States, 634 F.3d 1303, 1314 (11th Cir. 2011)).
[37] *Armstrong*, 986 F.3d at 1350 (citing *Murphy*, 634 F.3d at 1307–09).
[38] *Id.*
[39] *Id.* (citing *Murphy*, 634 F.3d at 1306).
[40] *Id.* (citing *Murphy*, 634 F.3d at 1314).
[41] *Id.* (quoting *Murphy*, 634 F.3d at 1308–09) (internal quotations omitted).
[42] *Id.*
[43] *Armstrong*, 986 F.3d at 1350.
[44] *Id.* at 1351.

allowing the district court to consider his subsequent § 2255 petition.[45] Because Armstrong failed to obtain this required certification, the court affirmed the district court's decision to dismiss Armstrong's § 2255 petition due to lack of jurisdiction.[46] Although the Eleventh Circuit had not addressed this issue prior to *Armstrong*, its conclusion was consistent with surrounding circuits' decisions.[47] The Fifth, Seventh, Ninth, and Tenth Circuits all previously held that a § 3582(c) sentence reduction does not constitute a new, intervening judgment, but is merely a reduction.[48]

In deciding *Armstrong*, the court had the opportunity to remove a procedural hurdle and allow many defendants to file a second or successive § 2255 habeas relief petition without first obtaining an order authorizing the consideration. From a defendant's perspective, this potential outcome may have resulted in greater access for review. However, such an outcome could have also resulted in an influx of cases, clogging the courts. Rather than weighing these hypothetical policy questions, the Eleventh Circuit simply relied on precedent and ultimately joined its sister circuits in holding that a 18 U.S.C. § 3582(c) sentence reduction does not constitute a de novo resentencing.

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[45] *Id.*
[46] *Id.*
[47] *Id.* at 1350–51.
[48] *Id.* (citing United States v. Jones, 796 F.3d 483, 486 (5th Cir. 2015); White v. United States, 745 F.3d 834, 837 (7th Cir. 2014); Sherrod v. United States, 858 F.3d 1240, 1242 (9th Cir. 2017); United States v. Quary, 881 F.3d 820, 822 (10th Cir. 2018)).