

was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848.” § 4C1.1(a)(10). Here, defendant clearly received a four-level upward adjustment under § 3B1.1(c) for his aggravating role as an organizer or leader. (Sentencing Tr., DE # 214 at 113; Resentencing Tr., DE # 273 at 15.) Defendant admits this fact in his own motion. (DE # 276 at 4.)

It is worth noting that § 4C1.1(a)(10) lists two criteria, unlike all of the other subsections, which list only one. To repeat, § 4C1.1(a)(10) requires that: “the defendant did not receive an adjustment under § 3B1.1 (Aggravating Role) *and* was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848.” *Id.* (emphasis added). Perhaps defendant would argue that he satisfies § 4C1.1(a)(10) because he meets one of the two criteria, though he did not explicitly make such an argument. Even if he had, though, the argument would have failed. Section 4C1.1(a)(10) does not state that satisfaction of either the first *or* second criteria will suffice. Rather, it requires satisfaction of the first “*and*” second criteria. § 4C1.1(a)(10) (emphasis added). As another court under the Seventh Circuit’s purview recently clarified, “[n]o defendant who receives an Aggravating Role Adjustment under § 3B1.1 of the Guidelines can ever be eligible for the Zero-Point Offender Adjustment under § 4C1.1(a)” *United States v. Acosta*, No. 3:18-CR-30110 -NJR-1, 2024 WL 1836403, at *1 (S.D. Ill. Apr. 26, 2024) (quoting *United States v. Mahee*, No. 121CR00494SDGJSA1, 2023 WL 8452433, at *4 (N.D. Ga. Dec. 6, 2023)).

For the reasons set forth above, defendant's motion under 18 U.S.C.

§ 3582(c)(2) and Amendment 821 is **DENIED**. (DE # 276.)

SO ORDERED.

Date: June 4, 2024

s/James T. Moody
JUDGE JAMES T. MOODY
UNITED STATES DISTRICT COURT