

IN THE SUPREME COURT
OF THE UNITED STATES

In re: Antwoyn Spencer
Petitioner

19-7047

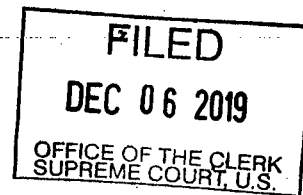
Case No.

ORIGINAL

ON PETITION FOR A WRIT OF MANDAMUS FROM THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

COMES NOW, Petitioner, Antwoyn Spencer proceeding pro se, and hereby moves this Honorable Court for a writ of mandamus. In support thereof, Petitioner submits the following:

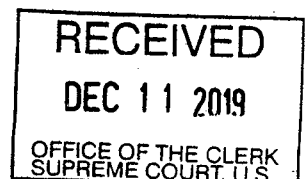
RELIEF SOUGHT:



Petitioner respectfully requests a writ of mandamus directing the Eighth Circuit Court of Appeals to proceed to a final decision in Case No.s 19-2685 and 19-2883.

ISSUE PRESENTED:

Petitioner is currently being deprived of his Civil Right of personal liberty against law, Petitioner suffers unjust punishment due to the undue delay in appellate ruling.



IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ANTWOYN TERRELL SPENCER

Appellant, Pro Se,

V.

UNITED STATES OF AMERICA

Appellee.

19-2685

No. 19-2685

ORIGINAL

APPELLANT'S BRIEF

Antwoyn T. Spencer

#14781-041 Unit K-1

Federal Correctional Institution

P.O. Box 1000

Sandstone MN 55072

FILED

DEC 06 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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TABLE OF AUTHORITIES

CASES

Coal for Fair and Equitable Reg. of Docks on the Lake of the Ozards
V. Fed. Energy Reg. Comm'n 297 F.3d 771, 778 (8th Cir. 2002)

Apprendi V. New Jersey 530 U.S. 466, 147 L. Ed.2d 435. 120
S. Ct. 2348 (2000)

STATUTES

28 U.S.C. §1331

28 U.S.C. §1291

18 U.S.C. §3231

Section 404 of the First Step Act

U.S. CONSTITUTION

Due Process Clause of the Fifth Amendment

JURISDICTIONAL STATEMENT

Appellant moved the District Court to Impose a Reduced Sentence Pursuant to Section 404 of the First Step Act. Proceedings to enforce Civil Rights are civil proceedings. The District Court had jurisdiction pursuant to 28 U.S.C. §1331 (Original jurisdiction of all civil actions arising under the Constitution, Laws, and Treaties of the United States) and 18 U.S.C. §3231 (Original jurisdiction of all offenses against the laws of the United States). The Court had jurisdiction over the crime and person charged.

This is an appeal from the final order denying Appellant's Motion for Imposition of a Reduced Sentence Pursuant to Section 404 of the First Step Act denied on July 26, 2019 in the United States District Court for the District of Minnesota. This Court has jurisdiction pursuant to 28 U.S.C. §1291 (final decisions of a district court).

The District Court's order is a final decision within the meaning of 28 U.S.C. §1291

A timely Notice of Appeal was filed on August 2, 2019.

I. STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

1. Whether Appellant was deprived of his civil right of personal liberty against law contrary to the Constitution and Laws of the United States.

II. STATEMENT OF THE CASE

1. On April 5, 2019, Appellant filed a Pro Se Motion for Imposition of a Reduced Sentence Pursuant to Section 404 of the First Step Act.

2. The Government filed an Opposition and a Revised Version of its Memorandum in Opposition to Appellant's Pro Se Motion.

3. On July 26, 2019, John R. Tunheim, Chief Judge, United States District Court denied Appellant's Pro Se motion.

4. The instant Appeal followed.

STATEMENT OF THE FACTS

1. On December 21, 2018, the First Step Act of 2018 was enacted.

2. Section 404 of the First Step Act directs a court that imposed a sentence for a crack cocaine offense in violation of 21 U.S.C. §841(b)(1) prior to August 3, 2010, to resentence a defendant in accordance with the modification of the statute, on a motion of the defendant.

3. Appellant was convicted of, and sentenced to Conspiracy to Distribute Cocaine and Crack Cocaine in violation of 21 U.S.C. §841(a)(1)(b)(1)(A), and §846, prior to August 3, 2010.

II. SUMMARY OF THE ARGUMENT

1. Appellant was sentenced prior to August 3, 2010, for a covered offense within the meaning of Section 404(a) of the First Step Act therefore Appellant is entitled to resentencing in light of his civil right of personal liberty and denial of Appellant's motion deprived him of that right.

I. ARGUMENT

DENIAL OF APPELLANT'S MOTION FOR IMPOSITION OF A REDUCED SENTENCE PURSUANT TO SECTION 404 OF THE FIRST STEP ACT DEPRIVED APPELLANT OF HIS CIVIL RIGHT OF PERSONAL LIBERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE LAWS OF THE UNITED STATES.

I. Standard of Review

The United States Court of Appeals for the Eighth Circuit reviews Constitutional issues de novo. See *Coal. for Fair and Equitable Reg. of Docks on the lake of the Ozards V. Fed Energy Reg. Comm'n*, 297 F.3d 771, 778 (8th Cir. 2002).

II. Legal Argument

The First Step Act, S 756, was enacted on December 21, 2018. It provides:

a) DEFINITION OF COVERED OFFENSE - In this section, the term "Covered Offense" means the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372), that was committed before August 3, 2010.

b) DEFENDANT'S PREVIOUSLY SENTENCED - A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

c) LIMITATIONS - No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously reduced in accordance with the amendments made by sections 2 and

3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of the enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

Section 404 mandates a court upon a motion of a defendant to impose a sentence applicable to the changes made from the 100:1 ratio to the 18:1 ration in regard to sentences involving crack cocaine. Section 2 of the Fair Sentencing Act of 2010 (hereafter FSA 2010) reduced the penalties for offenses involving cocaine base or crack cocaine by increasing the threshold amounts of crack needed to trigger mandatory minimum sentences under §841(b)(1).

After the statute's effective date of August 3, 2010, the amount of crack necessary to trigger the 5 to 40 year imprisonment range under 21 U.S.C. §841(b)(1)(B) increased from 5 grams to 28 grams. Likewise, the quantity of crack needed to trigger the 10 years to life imprisonment range under 21 U.S.C. §841(b)(1)(A) increased from 50 grams to 280 grams.

As long as the offense committed prior to August 3, 2010 involves the modified sections of the statute in which 5 grams of crack increased to 28, and 50 grams of crack increased to 280, a defendant is covered by this section. See 404(a) (DEFINITION OF COVERED OFFENSE).

And a court has a mandatory duty to establish a reduced sentence for the modified sections of the statute, as long as the sentence includes a covered offense. In other words, if a sentence includes a conviction of 5 grams or more of crack or 50 grams or more of crack, the court must not look beyond those modified sections of the statute while applying a reduced sentence. The court must specifically resentence a defendant using only the modified "crack" sections of the statute. Those sections have been increased to 28 grams or more and 280 grams or more. See 404(b). "A court that imposed a sentence for a covered offense "must" impose a reduced sentence as if."

Congress intent is to eliminate unconstitutional sentences of defendants still serving time for harsh penalties of crack cocaine prior to FSA 2010, and replace them with a sentence prescribed by law as it stands today "without Government interference."

This is understood by mandatory language used in 404(b). The words "may" (must shall, is required to) and "impose" (establish, apply as mandatory) are used to compel a court to create a sentence in accordance with sections 2 and 3 of FSA 2010.

This understanding is reiterated by Congress restricting relief only to those that previously benefitted from FSA 2010 and those denied a motion after complete review of it on the merits. See 404(c). See also (c) at. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

Here, appellant was convicted of, and sentenced to Conspiracy to Distribute 5 Kilograms or more of cocaine and 50 grams or more of crack cocaine in violation of 21 U.S.C. §841(a)(1)(b)(1)(A), and 846, prior to August 3, 2010. In accordance with the modified sections of 21 U.S.C. §841(A) & (B) appellant's statutory penalties are no longer 10 years to life imprisonment but only 5 to 40 years. Furthermore, under the new crack cocaine guidelines, 50 grams or more of crack cocaine which is at least 28 but less than 112 grams of crack cocaine activate base offense level 24 as opposed to the base level 30 for at least 50 grams of crack cocaine but less than 150 grams, prior 2010.

Anything beyond base offense level 24 would violate the Supreme Court holding in *Apprendi v New Jersey* 530 U.S. 466, 147 L. Ed.2d 435, 120 S. Ct. 2348 (2000)(Prescribed Statutory Maximum). Also, an abundance of 851 enhancements no longer qualify as a "serious drug felony."

Pursuant to section 404 of the First Step Act the decrease in appellant's applicable guidelines range establish that he is entitled to immediate release because he has served years of imprisonment beyond the time authorized by the modified sections of 21 U.S.C. §841(b)(1)(A) & (B). Therefore, denial of appellant's motion to impose a reduced sentence deprived him of his civil right of personal liberty against law.

FACTS NECESSARY:

- 1) On 4/15/19, Petitioner filed a motion for imposition of a reduced sentence pursuant to Section 404 of the First Step Act.
- 2) On 7/26/19, Petitioner's motion was denied by Chief Judge, John R. Tunheim, United States District Court (District of Minnesota).
- 3) Petitioner filed a notice of appeal
- 4) ON 8/27/19, Petitioner filed his brief after a briefing schedule was established by the Eighth Circuit Court of Appeals.
- 5) On 10/3/19, after receiving an extension, the United States filed its response brief.
- 6) On 10/16/19, Petitioner filed his reply brief.
- 7) On 8/12/19, Petitioner filed a petition for a writ of habeas corpus.
- 8) On 8/20/19, Petitioner's petition was denied by District Judge, Paul A. Magnuson, United States District Court (District of Minnesota).
- 9) Petitioner filed a notice of appeal
- 10) On 9/9/19, Petitioner filed a request for a certificate of appealability and an appellate brief.
- 11) Since Petitioner's last filing in both cases, there has been no action taken by the Court.

REASONS WRIT SHOULD ISSUE:

1) Petitioner is currently being deprived of his Civil Right of personal liberty against law.

2) Pending before the Eighth Circuit Court of Appeals are legally sufficient briefs that demonstrate Petitioner is being illegally restrained of his liberty (see attached briefs).

3) There has been no legal argument presented to contest Petitioner's position.

4) Mandamus is warranted to provide fairness in administration and to eliminate unjustifiable delay.

5) Mandamus is necessary to relieve Petitioner of his unlawful incarceration thereby setting Petitioner free from undue governmental restraint.

CONCLUSION

Petitioner prays this Honorable Court issue the writ of mandamus requested.

Respectfully submitted

Date 12/6/19

Antwoyn Spencer
Antwoyn Spencer, Petitioner