

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

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February 06, 2020

Clerk - Middle District of Florida  
U.S. District Court  
801 N FLORIDA AVE  
TAMPA, FL 33602-3849

Appeal Number: 19-12947-A  
Case Style: USA v. Luis Morales  
District Court Docket No: 8:99-cr-00447-SCB-AAS-3

The enclosed copy of the Clerk's Entry of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Denise E. O'Guin, A  
Phone #: (404) 335-6188

Enclosure(s)

DIS-2 Letter and Entry of Dismissal

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 19-12947-A

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LUIS FERNANDEZ MORALES,

Defendant - Appellant.

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Appeal from the United States District Court  
for the Middle District of Florida

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ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Luis Fernandez Morales has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective February 06, 2020.

DAVID J. SMITH  
Clerk of Court of the United States Court  
of Appeals for the Eleventh Circuit

by: Denise E. O'Guin, A, Deputy Clerk

FOR THE COURT - BY DIRECTION

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 19-12947-A

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS FERNANDEZ MORALES,

Defendant-Appellant.

---

Appeal from the United States District Court  
for the Middle District of Florida

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ORDER:

Appellant's motion for leave to proceed on appeal *in forma pauperis* is DENIED because the appeal is frivolous. *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

/s/ Gerald B. Tjoflat  
UNITED STATES CIRCUIT JUDGE

Appendix "C"

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 19-12947-A

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS FERNANDEZ MORALES,

Defendant-Appellant.

Appeal from the United States District Court  
for the Middle District of Florida

Before: LUCK and TJOFLAT, Circuit Judges.

BY THE COURT:

Luis Morales has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's November 22, 2019, order denying his motion for leave to proceed *in forma pauperis* in his appeal of the district court's order denying his *pro se* motion to reduce his sentence under the First Step Act of 2018. Upon review, Morales's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

APPENDIX "D"

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:99-cr-447-T-24AAS

LUIS FERNANDEZ MORALES,

Defendant.

**ORDER**

THIS CAUSE comes before the Court on Defendant Luis Fernandez Morales' Motion to Alter/Amend Sentence Pursuant to the "First Step Act" of 2018. (Doc. 277). The United States Probation Office has filed a First Step Act of 2018 Memorandum in response to Defendant's Motion, stating that Defendant is ineligible for relief under either Section 404 or Section 401 of the First Step Act. (Doc. 291).

Defendant was sentenced on December 6, 2000, to a term of life for conspiracy to possess with intent to distribute five kilograms or more of cocaine in violation of 21 U.S.C. §§ 846. (Doc. 120). The First Step Act of 2018 ("2018 FSA") makes retroactive, to defendants sentenced before August 3, 2010, sections 2 and 3 of the Fair Sentencing Act of 2010 ("2010 FSA"), which lowered statutory penalties for certain offenses involving *crack cocaine*. *See* First Step Act, Pub. L. No. 115-391, § 404 (emphasis added). In this regard, the 2018 FSA is purely an extension of the 2010 FSA, designed only to afford relief to a narrow group of defendants to whom relief under the 2010 FSA was previously unavailable. Congress enacted the 2010 FSA on August 3,

Appendix "A"

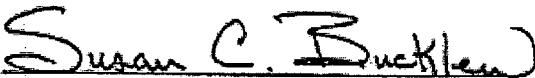
2010, to reduce the disparity *between the amount of powder cocaine and the amount of crack cocaine* required to trigger mandatory minimums. *Dorsey v. United States*, 567 U.S. 260, 264 (2012) (emphasis added). Because Defendant's offense of conviction involved cocaine, it is not a "covered offense" as defined by Section 404 of the First Step Act, the Court agrees with the United States Probation Office's determination that Defendant is ineligible for a sentence reduction under Section 404 of the First Step Act.

Defendant also appears to be requesting a sentence reduction under Section 401 of the First Step Act ("Reduce and Restrict Enhanced Sentencing for Prior Drug Felonies"). However, according to Section 401(c), "[t]his section, and the amendments made by this section, shall apply to any offense that was committed before the date of the enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment." In this case, sentence was imposed on December 6, 2000, prior to the date of enactment of December 21, 2018. Therefore, Defendant is not eligible for a sentence reduction.

**ACCORDINGLY**, it is **ORDERED AND ADJUDGED**:

Defendant's Motion to Alter/Amend Sentence Pursuant to the "First Step Act" of 2018 (Doc. 277) is **DENIED**.

It is so **ORDERED** at Tampa, Florida this 16th day of July, 2019.

  
SUSAN C. BUCKLEW  
United States District Judge

Copies to:  
Counsel of record