

United States Court of Appeals

For The Eighth Circuit

Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329

St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
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March 19, 2020

Mr. Robert Phelps, Clerk
U.S. District Court
320 Sixth Street
Room 301
Sioux City, IA 51101

Case: United States v. Timothy Martin Kendrick
District Court Case No: 6:02-cr-02039-LRR-2

Dear Mr. Phelps,

PROVES PREVIOUS MOTION SUBMITTED

Please find enclosed what we have construed as a new motion for reduction in sentence in the above-mentioned case for filing in your court.

Mr. Kendrick is advised that sending motions and other documents that should be filed in the District Court to our court only results in delay as they must then be forwarded to the appropriate court for filing.

Should you require further assistance in this matter, please do not hesitate to contact our office.

Sincerely,

Michael E. Gans
Clerk of Court

cmh

Mr. Timothy Martin Kendrick
#09128-029
Federal Corrections Institution
2680 Hwy 301 South
Jessup, GA 31599

*They missed original Motion for Reduction
via personal letter to District Court.*

"APPENDIX A"

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

No: 20-1738

United States of America

Plaintiff - Appellee

v.

Timothy Martin Kendrick

Defendant - Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(6:02-cr-02039-LRR-2)

JUDGMENT

Before BENTON, WOLLMAN, and ERICKSON, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

April 09, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX "B"

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 04/03/2020

Case Name: Timothy Kendrick v. United States

Case Number: 19-1217

Docket Text:

Tendered Clarification to motion and amendment to petition filed in district court received from Petitioner Mr. Timothy Martin Kendrick w/service 04/03/2020. [4898965] [19-1217]

The following document(s) are associated with this transaction:

Document Description: Documents for district court

Notice will be mailed to:

Mr. Timothy Martin Kendrick
FEDERAL CORRECTIONAL INSTITUTION
09128-029
2680 301 South
Jesup, GA 31599

Notice will be electronically mailed to:

Mr. Dan Chatham: dan.chatham@usdoj.gov,
usaian.appellate@usdoj.gov, usaian.ecfcrimcr@usdoj.gov, caseview.ecf@usdoj.gov
Mr. Ravi T. Narayan: Ravi.Narayan@usdoj.gov,
usaian.ecfcrimcr@usdoj.gov, USAIAN.Appellate@usdoj.gov

No Appointment of Counsel

"
APPENDIX C
"

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1738

United States of America

Appellee

v.

Timothy Martin Kendrick

Appellant

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(6:02-cr-02039-LRR-2)

ORDER

The motion of appellant for an extension of time until July 23, 2020 to file a petition for rehearing is granted in part until June 1, 2020.

Electronically-filed petitions for rehearing must be received in the clerk's office on or before the due date.

The three-day mailing grace under Fed.R.App.P. 26(c) does not apply to petitions for rehearing.

April 21, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX "D"
(NEWLY FILED MOTION TO AMEND COMPLAINT)

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 04/21/2020

Case Name: United States v. Timothy Kendrick

Case Number: 20-1738

Docket Text:

MOTION for extension of time to file petition for rehearing until 07/23/2020, filed by Appellant Mr. Timothy Martin Kendrick w/service 04/17/2020. [4904958] [20-1738]

The following document(s) are associated with this transaction:

Document Description: motion for extension of time to file petition for rehearing

Notice will be mailed to:

Mr. Timothy Martin Kendrick
FEDERAL CORRECTIONAL INSTITUTION
09128-029
2680 301 South
Jesup, GA 31599

Notice will be electronically mailed to:

Mr. Sean R. Berry: Sean.Berry@usdoj.gov,
usaian.appellate@usdoj.gov,usaian.ecfcrimcr@usdoj.gov,caseview.ecf@usdoj.gov
Mr. Dan Chatham: dan.chatham@usdoj.gov,
usaian.appellate@usdoj.gov,usaian.ecfcrimcr@usdoj.gov,caseview.ecf@usdoj.gov

"APPENDIX D"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 02-CR-2039-LRR

vs.

ORDER

TIMOTHY MARTIN KENDRICK,

Defendant.

The matter before the court is Defendant Timothy Martin Kendrick's pro se Motion to Reduce Sentence pursuant to the First Step Act ("Motion") (docket no. 127), which was filed on March 24, 2020.

Congress enacted the First Step Act ("FSA") on December 21, 2018. The statute was part of a compressive criminal justice reform package and makes numerous changes to the criminal code. However, the only aspect which applies retroactively is Section 404, which makes the "Fair Sentencing Act of 2010" applicable to any eligible defendant sentenced prior to that code section taking effect, August 3, 2010. *See United States v. Montgomery*, Case No. 17-CR-6005-FPG, 2019 WL 6114778, at *1 (W.D.N.Y. Nov. 18, 2019) ("Section 404 only applies to defendants who were convicted of certain offenses committed before August 3, 2010"); *see also United States v. Francis*, No. 5:01-CR-94-BO, 2019 WL 5842800, at *2 (E.D.N.C. Nov. 6, 2019) ("[I]f a defendant committed a crack cocaine offense prior to August 3, 2010, the statutory penalties for which were modified by the Fair Sentencing Act, and that defendant did not already receive the benefit of the Fair Sentencing Act or have a prior motion under § 404 of the First Step Act denied on the merits, the defendant is facially eligible for a reduced sentence");

Sentenced
Sept. 8
2006

APPENDIX "F"

United States v. Matthews, No. CR 15-00636 HG, 2019 WL 1246184, at *2 (D. Haw. Mar. 18, 2019) (providing that “[t]here are a number of reforms in the First Step Act, but Section 404 is the only provision that applies retroactively to defendants who have already been sentenced”). In order to be eligible for relief, Defendant must have been convicted under a “covered offense.” See *United States v. Stoltz*, No. 1:15-cr-10013-JDB-1, 2019 WL 3850542, at *1 (W.D. Tenn. Aug. 15, 2019). “A ‘covered offense’ is defined as a violation of a Federal criminal statute, ^{Guideline Levels} the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 . . . that was committed before August 3, 2010.” *Id.* (quoting § 404(a), 132 Stat. at 5222). Further, “Sections 2 and 3 of the Fair Sentencing Act of 2010 dealt with certain crack cocaine offenses.” *Id.* Thus, “the First Step Act permits the retroactive reduction of certain drug trafficking sentences, but applies only to those convicted of crack cocaine offenses.” *Id.* (quoting *United States v. Majors*, 376 F.Supp.3d 806, 809 (M.D. Tenn. 2019)); see also *United States v. Herrera*, No. CR 02-531-RSWL-2, 2019 WL 3418835, at *1 (C.D. Cal. July 29, 2019) (“Section 404 of the First Step Act only applies to cocaine-based offenses”).

On October 25, 2002, a grand jury returned a multi-count Indictment (docket no. 1), charging Defendant with conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 846, 851 (Count I); distributing methamphetamine in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C) and 851 (Count II); and two counts of distributing methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C) and 851 (Counts VIII and IX).¹ See Indictment at 1-2, 4-5. Defendant is not entitled to relief under the FSA. Indeed, Defendant was not convicted of a crack cocaine offense. He was convicted of multiple drug offenses involving methamphetamine. Methamphetamine

aggravated. “TRIGGERED” threshold due to drug quantity

¹ Defendant’s co-defendant, Kenneth Gene Harms, Jr., was also charged with Counts I and II, and was charged with additional drug and gun offenses, Counts III-VII and X, not charged against Defendant. See Indictment at 1-6.

offenses are not covered offenses for purposes of the FSA. See *United States v. Gonzalez-Oseguera*, Crim. No. 06-00593 HG-01, 2019 WL 1270916, at *2 (D. Haw. Mar. 19, 2019) (finding that a defendant sentenced for a methamphetamine offense was not eligible for a reduction of sentence under the FSA); see also *United States v. Monroy*, Criminal No. 98-137(3)(DSD/AJB), 2019 WL 5420637, at *1 (D. Minn. Oct. 23, 2019) (finding that a defendant convicted of a methamphetamine offense did not have a “covered offense” under the FSA). Accordingly, the Motion (docket no. 127) is **DENIED**.

IT IS SO ORDERED.

DATED this 24th day of March, 2020.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA