

No. 19-8877

ORIGINAL

FILED

JUN 22 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Patrick D. Lomas

— PETITIONER

(Your Name)

vs.

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TO THE FIFTH CIRCUIT COURT OF APPEALS

U.S.C.A. No. 19-30651 / U.S.D.C. No. 3:97-CR-42-1

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Patrick D. Lomas

09630-097

Pro-se

(Your Name)

FCI-Williamsburg, P.O. Box 340

(Address)

Salters, South Carolina 29590

(City, State, Zip Code)

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

I.

Did the District Court abuse it's Discretion when it denied Petitioner's Motion seeking a reduction of Sentence under Section 404(b) of the First Step Act, and the Fair Sentencing Act

II.

Did the District Court abuse its' discretion when it reviewed Petitioner's § 404(b) Motion under § 3582 (c)(1)(B) Standard limiting it's scope.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4 - 11
REASONS FOR GRANTING THE WRIT	12
CONCLUSION.....	13

INDEX TO APPENDICES

APPENDIX A Appellant Court Opinion

APPENDIX B District Court Opinion

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

U.S. v. Justin D. Powell, 360 F Supp 3d 134 2019 U.S. Dist. Lexix 44084 (2nd. Cir. 2019)	<u>8</u>
U.S. v. Rhines, 4:01-CR-310 (M.D. PA June 7 2019)	<u>8</u>
U.S. v. Jason Rose, Junior Robinson, 03:CR-1501 (VEC) 2nd. Cir. 05-24-2019	<u>8</u>
U.S. v. Shelton, No. 3:07-329(CMC) WL 1598921 at *3 (DSC Apr. 2019)	<u>11</u>

STATUTES AND RULES

First Step Act Pub. Law. No. 115-3914, 132 Stat. 5194 § 404(a) (2018)	<u>9</u>
Fair Sentencing Act Pub. Law No. 111-220, 124 Stat. 2371 (2010)	<u>9</u>

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 01, 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). Title 28 U.S.C. § 2403 may apply in this case.

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Step Act of 2018 Pub.Law. No. 115-391, 132 Stat. 5194 § 404(a) (2018)

Fair Sentencing Act Pub. Law No. 111-220, 124 Stat. 2372 (2010)

Fifth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Petitioner was convicted for distribution of cocaine base (21 U.S.C. § 841 (a)(1). Conspiracy to tamper with a witness (18 U.S.C. § 371, 18 U.S.C. (2), Tampering with a witness (18 U.S.C. § 1512 (b), and using and carrying a firearm during and relation to a crime of violence (18 U.S.C. § 924 (c)(1). on October 14th, 1997 after a trial by jury.

Petitioner was sentenced to 360 months on count one distribution of cocaine base, and 60 months each on the remaining counts, count IV using a firearm during and in relation to a crime of violence was designated to run consecutive to the sentences imposed on counts I, II and III, as per statute, and the total term of incarceration of 420 months.

The presentence report prepared by the United States Probation Officer states that " the drug amount used for calculation was 2.075 kilograms of cocaine base (crack), the amount of relevant conduct calculated in the case. (PSR, Paragraph 28, as revised January 9th., 1998). Based on the alleged amount of cocaine, base, the minimum term of imprisonment was 10 years and the maximum term of imprisonment was life imprisonment.. Based on his base offense level of 38, plus two levels for obstruction of justice for a total offense level of 40, and his Criminal History category of IV, the guideline imprisonment range was 360 months to life. For crack cocaine convictions, Petitioner was sentenced to 360 months. Pursuant to 18 U.S.C. § (c) and 18 U.S.C. § 924 (d), the sixty-months sentence for count IV was run consecutive for a total of 420 months of imprisonment.

Petitioner appealed his conviction, the Fifth Circuit affirmed and a certiorari was denied. Petitioner further sought post-conviction relief, or had filed on his behalf by U.S. probation, a variety of motions for sentence reductions or re-sentencing, based on changes to the United States Sentencing

Guidelines and/or statutory changes regarding sentencing, particularly as regards to the sentence for distribution of cocaine base, those motions have been denied.

Petitioner subsequently submitted a motion pursuant to § 404 (b) under the First Step Act/Fair Sentencing Act, seeking a reduction of his mandatory minimum.

The district court dismissed/denied Petitioner's motion seeking a reduction, based on his prison disciplinary record which was a violation of his discretion. The court placed significant emphasis on his non-extraordinary rehabilitation efforts. However, the district court correctly recognized that Petitioner was eligible for a sentence reduction under the First Step Act. See United States v. Jackson, 945 F 3d. 315, 320-21 (5th Cir. 2019). The court also stated, although Petitioner was eligible for a sentence reduction, the court was under no obligation to grant his case.

Issue-1

Did the district court abuse it's discretion when it denied Petitioner's motion seeking a Reduction of sentence pursuant to the First Step Act and the Retroactive Application of the Provisions of the Fair Sentencing Act based on vindictive and/or arbitrary motives which abused it's discretion

The court's arbitrary denial of Petitioner's motion for reduction of sentence pursuant to the First Step Act and the retroactive application of the provisions of the Fair Sentencing Act was an abuse of the court's discretion.

Specifically, all defendant's sentenced before AUGust 3rd., 2010 to the 100-to-1 weight ratio for crack cocaine are eligible for relief under the First Step Act. The Fair Sentencing Act of 2010 was ~~no~~ Act of Congress that was signed into federal Law by U.S. President Barack Obama on August 3rd., 2010 that reduces the disparity between the amount of crack cocaine and powder cocaine needed to trigger certain federal criminal penalties fro 100-to-1 weight ratio to 18-to-1 weight ratio. The provisions of the Fair Sentencing Act of 2010 applied to all defendant's sentenced on or before August 3rd., 2010.

The First Step Act signed into Federal Law by President Trump on December 21, 2018 made provisions of the Fair Sentencing Act applicable to all defendant's sentenced for crack cocaine offense before 2010.

In determining whether a reduction in sentence is warrented for a defendant eligible for consideration, the court must consider the sentence that it would have originally imposed had the First Step Acts provisions now 18-to-1 weight ratio been in effect at the time of his sentencing.

Petitioner was subsequently sentenced to 420 months to life with a Criminal History Category of IV and an Offense Level of 40.

The Petitioner was sentenced pursuant to the 100-to-1 weight ratio which qualifys him for a sentence reduction pursuant to § 404 (b) to the 18-to-1 weight ratio. As specifically, held by Congress in the First Step Act the

Petitioner was charged with distribution of crack cocaine an unspecified amount of grams of cocaine base and sentenced under 21 U.S.C. § 841 (a)(1) under the 100-to-1 weight ratio, now under the 18-to-1 weight ratio he must be resentenced under 21 U.S.C. § 841 (b)(1)(C) under the 18-to-1 weight ratio.

The motion allowed the court to reduce the Petitioner's sentence under 21 U.S.C. § 841 (b)(1)(C) under the 18-to-1 weight ratio, which was consistant with the mandates of the First Step Act of December 21, 2018 and the Fair Sentencing Act of August 3rd., 2010. The court's arbitrary denial of Petitioner's motion of which Petitioner qualified was a total abuse of the court's discretion.

The court based it's denial of Petitioner's motion on the grounds of his prison record pursuant to § 3553(a). Here the court placed significant emphasis on his past conduct or disciplinary record but, placed little emphasis on his extroardinary rehabilitation, efforts to improve himself over the course of his incarceration, also the district court has not acknowledged that it has been ~~15~~ ¹⁷ 4 years since his last prison infraction. Petitioner has completed the following courses during that time span. See Attached.

It must be noted that Petitioner has been incarcerated for ~~23~~ years and his past prison disciplinary record establishes that his infractions equaly to approximately 2 per year which is extroardinary considering that the Hostile envirement that he was placed in., people in society commit more than that during the course of a month.

Several Circuits have considered an individual's prison record and has determined that " although he has some disciplinary history during his term of imprisonment, his record is not extroardinary compared to other inmates who have served such a significant period of imprisonment." He has participated in and completed several courses while in custody, including

drug education, he also obtained his G.E.D. in 2008." The Petitioner is now 49 years old and due to his age, is statistically at a lower risk of recidivism. See U.S. v. Justin D. Powell 360 F. Supp. 3d. 134; 2019 U.S. Dist. Lexis 44084 (2nd, Cir. 2019) U.S. v. Rhines, 4:01-CR-310 (M.D PA June 3, 2019); U.S. v. Jason Rose, Junior Robinson 03:CR-1501 (VEC) 2nd. 05-24-2019).

Petitioner concludes that the district court not only abused it's discretion when failing to adhere to the Fair Sentencing Act and First Step Act's Congressional mandates, however, the district court has failed to consider and apply the principles of § 3553(a) when reviewing Petitioner's § 404(b) motion for reduction of sentence in light of all the facts being presented in his claim, the court should reverse the district court assessment and determination.

The court specifically, held that Petitioner was eligible for a sentence reduction, however, it was not going to grant due to his prior prison act's and disciplinary record, without taking into account Petitioner's reform acts efforts under § 3553(a).

Issue-2

Did the District Court Abuse it's Discretion When it Reviewed Petitioner's § 404 (b) Motion under the § 3582 (c)(1)(B) Standard Limiting it's Scope

Section 2 of the Fair Sentencing Act increased the threshold quantities of crack cocaine necessary to trigger mandatory minimum sentences under 21 U.S.C. § 841 (b)(1). Pursuant to § 404(b) of the First Step Act, " a court that imposed a sentence for a covered offense may impose a sentence for a covered offense and may impose a reduced sentence if section 2 of the Fair Sentencing Act were in effect at the time the covered offense was committed."

Section 404 (b) defines "covered offense" as ¶ a violation of Federal Criminal Statute, the Statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010.

Section 404 of the FSA establishes its remedy in two steps, and it applies to Petitioner at each step. First, the FSA defines what offenses are covered by its remedy.

Definition of Covered Offense: In this section, the term "covered offense" means a violation of federal Criminal Statute, the statutory, penalties for which were modified by section 2 or 3 of the Fair Sentencing Act (Public Law 111-220; 124 Stat. 2372), that was committed before August 3rd, 2010.

First Step Act of 2018, Pub. Law No. 115-391, 132 Stat. 5194, § 404(a) (2018). Defendant's drug conviction is a covered offense because Section 2 of the Fair Sentencing Act of 2010 modified the "statutory penalties" under § 841 (b) for "violation[s]" of 21 USC § 841 (a), and he committed his offense before August 3rd. 2010. As noted in the PSR, there can be no dispute that the statutory penalties have been modified. Next, the FSA provides the circumstances under which a district court may impose a reduced sentence for defendant's who were previously sentenced for a "covered offense.":

Defendant's Previously Sentenced" A court that imposed a sentence for a covered offense may, on motion of the defendant...,impose a reduced sentence as if Section 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 (emphasis added).

Public Law No. 115-391, 132 Stat. 5194 ¶ 404(b) (2018). This provision applies to Petitioner because the court previously "imposed a sentence" on him "for a covered offense." and he is moving for imposition of a reduced sentence. Thus this court may Remand for further proceedings consistent with the Firts Step Act and reduce his sentence for crack cocaine offense.

Title 18 USC § 3582 (c) sets out three exceptions to the rule that a court may modify a term of imprisonment once it has been imposed[.] First § 3582 (c) (1)(A) describes the "compassionate release" procedure, which is not relevent here. Second § 3582 (c)(1)(B) authorizes the court to modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure." Third, § 3582 (c)(2) says that when a "defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." The court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Section 404(b) of the First Step Act says that a "court that imposed a sentence for a covered offense may...impose a reduced sentence as if section 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was "committed". The breadth of the court's discretion to impose a sentence below the recalculated guidelines range depends on whether the First Step Act is implemented through 18 U.S.C. ~~3582(c)(1)(B)~~ or 18 U.S.C. § 3582 (c)(2), and is imformed by the differences between those subsections and the respective authorities they cross reference. The former addresses statutory change; the latter addresses retroactive applications of the sentencing guidelines, because the First Step Act is a Statutory change

§ 3582 (c)(1)(B) is applicable, and absent any limiting language in the First Step Act (or § 3582 (c)(1)(B) similar to the Sentencing Guidelines Policy statements cross reference by § 3582 (c)(2), the court has full authority to impose a sentence below the recalculated guideline range.

Title 18 U.S.C. § 3582 (c)(1)(B) provides that " the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 Federal Rules of Criminal procedure ." By itself, § 3582 (c)(1)(B) authorizes nothing rather, "it simply notes authority to modify a sentence if modification is permitted by statute." S. Rep. No. 98-225, at 121 (August 4, 1983). section 404 of the First Step Act provides that authority; it expressly permits courts to "impose a reduced sentence" as if the Fair Sentencing Act were in effect."

Section 404(b). The Act places no other limits on the extent to which the court may reduce a sentence and places no restrictions at all on what a court may consider in imposing a reduced sentence. section 404 also gives courts discretion to deny a motion of a defendant who is eligible and whose sentence is not already fully in accordance with the Fair Sentencing Act, "so as long as the court denies the motion "after a complete review...on the merits: § 404(c).

Defendant's motion is authorized independently by the First Step Act, because the First Step Act has expressly provided authority to modify a term of imprisonment, it serves as a basis for relief under § 3582 (c)(1)(B). And is not limited by a recalculated guideline range under the First Step Act. In determining whether to exercise the reduced mandatory minimum and the statutory maximum sentence, the applicable guideline range, the factors set forth in § 18 U.S.C. § 3553(a) and any evidence of "Post-Sentencing Rehabilitation. See e.g. United States v. Shelton, No. 3:07-329 (CMC) 2019 WL 1598921, at *3 (D.S.C. APr. 15th. 2019).

REASONS FOR GRANTING THE PETITION

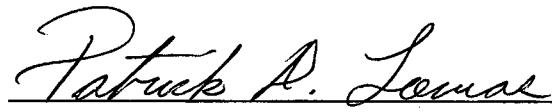
The district court viewed Petitioner's motion for reduction of sentence pursuant to the First Step Act, and held that he was eligible for a sentence reduction under the First Step Act, however, based on it's abuse of discretion denied Petitioner's motion for reduction of sentence based solely on an alleged prior disciplinary record, where during the instant 23 years in prison Petitioner's disciplinary infractions equal to approximately two (2) per year. The court failed to take into consideration through institutional programs he continues to reform, In it's decision to deny Petitioner the court failed to adhere to § 3553(a) to take into consideration his rehabilitative activities.

Petitioner, seeks this court's assistance in obtaining relief that even the court admitted he was eligible for and that is a reduced sentence under § 404(b) of the First Step Act.

CONCLUSION

The petition for a writ of certiorari should be granted. Vacate conviction and sentence, Remand for further procedure that is consistent with the First Step Act and the Fair Sentencing Act, by Reducing Petitioner's sentence.

Respectfully submitted,



Patrick D. Lomas

Date: June 22, 2020