No.:

In the
Supreme Court of the United States

Larry Williams,
Petitioner,

v.

The United States of America,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

Petition for a Writ of Certiorari

Rhys B. Cartwright-Jones
Counsel of Record
Ronald D. Yarwood
42 N. Phelps St.
Youngstown, OH 44503-1130
330-757-6609, tel.
866-223-3897, fax
rhys@cartwright-jones.com

Counsel for Petitioner

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

Question Presented for Review

What are the scope and limits of a District Court's discretion in denying an unopposed motion for sentence reduction under the First Step Act?

Following this Court's decision in *U.S. v. Booker*, 543 U.S. 220 (2005) and its progeny, in order for a district court to deviate from the U.S. Sentencing Guidelines, the court must mete out the applicable factors and elements for a departure or a variance and support its decision with a rational basis. The First Step Act's sentencing reduction portion effectively sets new discretionary guidelines, in applicable cases, falling beneath a defendant's original guidelines. It follows logically, then, that in order to deny a petition for resentencing under the First Step Act, particularly an unopposed one, a district court must mete out any applicable factors and elements for a departure or a variance and support its decision with a rational basis.

Parties to the Proceeding and Rule 26.9 Statement

Petitioner and defendant-appellant below, Larry Williams, is an individual person and Ohio domiciliary. The respondent, here, and the plaintiff-appellee below is the U.S. Pursuant to S.Ct.R. 26.9, both parties, the U.S. and Larry Williams are non-corporate entities, and have no corporate disclosures to make.

List of Related Proceedings

There are no proceedings that qualify as "related proceedings" under Rule 14 of this Court's rules of practice.

Table of Contents

Appendix Table of Contents

Table of Authorities

Cases **Page No.:**

Constitutional Provisions, Statutes, and Rules

Petition for a Writ of Certiorari

Petitioner Larry Williams petitions for a writ of certiorari to review the decision of the U.S. Court of Appeals for the Sixth Circuit, affirming the Northern District of Ohio's order denying his request for relief under the First Step Act. As this brief proceeds to relate, in order to support its finding, the District Court had to make findings in favor of an upward variance. The District Court having made no such finding, reversal is appropriate.

Opinions Below

The Sixth Circuit's decision dated June 12, 2020 is unreported and reproduced in Appendix A. (1a). The judgment entry and order of the Northern District of Ohio, Eastern Division at Akron, Ohio of November 23, 2018, denying relief under the First Step Act and reasserting its original sentnce is unreported and reproduced in Appendix B. (20a) This cause also relies on the Northern District of Ohio's general order concerning the First Step Act. General Order No. 2019-4 (N.D. Ohio, January 24, 2019), which is unreported and reproduced in Appendix C. (27a)

Jurisdiction

This Court's jurisdiction rests on 28 U.S.C. §1254. The Northern District of Ohio's Decision was issued on November 23, 2018. The U.S. Court of

Appeals for the Sixth Circuit issued its opinion on June 12, 2020.

Constitutional and Statutory Provisions

This cause concerns the First Step Act. In December 2018, Congress passed Pub. L. No. 115-391, 132 Stat. 5194, known as the First Step Act, which made retroactive some sentencing changes from an earlier statute, the Fair Sentencing Act. *Id.* § 404(a), (b). The Act allowed those sentenced under prior incarnations of the U.S. Sentencing Guidelines to file motions to reduce their sentences. On presentation of such a motion, a District Court "may . . . impose a reduced sentence as if the relevant provisions of the Fair Sentencing Act were in effect at the time the covered offense was committed." First Step Act, § 404(b). But none of this "shall be construed to require a court to reduce any sentence." *Id.* § 404(c). Those are the provisions of the Act with which this cause takes issue.

Procedural and Factual Background

This appeal comes timely, and the defense urges this Court to take jurisdiction and direct reversal on the issues presented. This cause turns on the scope and limit of discretion available to District Courts presented with unopposed First Step Act sentencing reduction petitions. This appeal posits that review is appropriate and adoption of a standard of abuse of discretion "*with bite*" is

appropriate.[1] That is, far from limitless, discretion in this context would require a trial court to proffer reasons tantamount to a variance or departure finding to deny a petition such as the petition in Williams' case.

Turning to the basic facts of the cause, in November of 2006, a grand jury returned an indictment against Larry Williams, charging him in a three-count indictment for offenses relating to crack cocaine and firearms indictments, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 922(g)(1). [R. 1, Indictment, PageID 3-5]. On August 28, 2007, Mr. Williams pled guilty pursuant to a written plea agreement to Counts One through Three of the indictment. [R. 19, Plea Agreement, PageID 97-105]. As set forth in the plea agreement, Mr. Williams's guilty plea to Count One subjected him to a statutory penalty range of ten years to life under 21 U.S.C. § 841(b)(1)(A). [R. 19, Plea Agreement, PageID 98].

The plea agreement set forth that because of the amount of crack cocaine possessed, 88.73 grams, Mr. Williams's base offense level would be 32. [R. 19, Plea Agreement, PageID 100, 102]. The plea agreement provided for him to receive three levels off for his acceptance of responsibility, resulting in a total offense level of 29, Criminal History Category VI, and a final guidelines range of 151 to 188 months. [R. 19, Plea Agreement, PageID 100]. The

---

1 *Bishop v. Smith*, 760 F.3d 1070, 1099 (10th Cir. 2014), Holmes, J., concurring, stating that "[s]ometimes [particular rational basis cases] are said to apply 'heightened rational-basis review' or—more colorfully—'rational basis with bite,' 'rational basis with teeth,' or 'rational basis plus.

plea agreement recognized that Mr. Williams had state cases for which a common pleas court had already imposed sentence. [R. 19, Plea Agreement, PageID 100].

At sentencing, on October 12, 2007, the district court found that Mr. Williams had a total offense level of 29 and a Criminal History Category of VI, which resulted in a sentencing range of 151 to 188 months. [R. 36, Sentencing Tr., PageID 158]. In support of a favorable sentence, his attorney detailed the tragic circumstances of Mr. Williams's upbringing. [R. 36, Sentencing Tr., PageID 164]. This included his mother's drug addiction, and how his mother and her boyfriend taught Mr. Williams to steal from others at the age of nine. [R. 36, Sentencing Tr., PageID 164]. His mother would force him to sneak into stores, by going through places that only a young child could fit, in order to swipe items from the store that could be sold. [R. 36, Sentencing Tr., PageID 164]. He was forced to start stealing cars at the age of twelve. [R. 36, Sentencing Tr., PageID 165]. Mr. Williams was also the victim of significant domestic violence at the hands of his mother. [R. 36, Sentencing Tr., PageID 163]. These events scarred Mr. Williams psychologically and emotionally, as detailed by Mr. Williams's father who made a statement to the district court during sentencing. [R. 36, Sentencing Tr., PageID 167].

In imposing the sentence, the district court explained that Mr. Williams's personal history was "tragic," but his offense and prior record were serious and concerning. [R. 36, Sentencing Tr., PageID 183]. The district court imposed a sentence at the low-end of his sentencing guideline range, that being 151

months of imprisonment. [R. 36, Sentencing Tr., PageID 184]. The sentence was ordered to be served consecutive to his eight-year state sentence. [R. 36, Sentencing Tr., PageID 184].

In 2008, the United States Sentencing Commission passed amendments to the sentencing guidelines, which retroactively reduced the base offense levels for all crack cocaine offenses by two levels. See U.S.S.G. Amendment 706 (eff. Nov. 1, 2008). Mr. Williams filed a pro se motion for sentence reduction based on the retroactive reduction in his base offense level under the guidelines amendment. [R. 25, Motion for Sentence Reduction, PageID 119-24]. Mr. Williams was later appointed counsel who moved to hold his motion for sentence reduction in abeyance. [R. 32, Motion to Hold Motion in Abeyance, PageID 144-46]. This motion was granted. [R. 33, Order, PageID 149-50]. That sentence reduction motion was never taken out of abeyance and never resolved.

In 2014, the United States Sentencing Commission passed more amendments to the sentencing guidelines, retroactively reducing the base offense levels for all drug offenses by two levels. See U.S.S.G. Amendment 782 (eff. Nov. 1, 2014). Mr. Williams filed another motion for sentence reduction, pursuant to 18 U.S.C. § 3582(c)(2). [R. 34, Motion for Sentence Reduction, PageID 152-54]. The district court found that while Mr. Williams was eligible for a reduction under 18 U.S.C. § 3582(c)(2), the district court denied any reduction to the sentence. [R. 42, Order, PageID 203-08].

On January 15, 2015, Mr. Williams completed his state sentence and was transferred into federal

custody. In December of 2018, nearly three years into serving Mr. Williams's federal sentence, the First Step Act was signed into law. Pub. L. No. 115-391, 132 Stat. 5194 (2018). Under Section 404 of the First Step Act, courts may reduce sentences for any prisoner still serving a sentence for a "covered offense." The First Step Act defines a "covered offense" as "a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Pub. L. 111-220; 124 Stat. 2372), that was committed before August 3, 2010." See First Step Act, Title IV, Sec. 404(a). The Act allows "[a] court that imposed a sentence for a covered offense" to "impose a reduced sentence as if Sections 2 and 3 of the Fair Sentencing Act of 2010 (Pub. L. 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed." *Id.*, Section 404(b).

The Fair Sentencing Act, enacted in 2010, reduced the statutory penalties for crack cocaine offenses. Prior to 2010, 21 U.S.C. §§ 841(b)(1)(A)(iii) provided for a sentencing range of ten years to life in prison if the offense involved over fifty grams of crack cocaine. 21 U.S.C. §§ 841(b)(1)(A) (1996). Under the Fair Sentencing Act, the threshold amount to trigger the ten-year mandatory minimum was raised from 50 to 280 grams of crack cocaine. 21 U.S.C. §§ 841(b)(1)(A) (2011). Further, offenses involving between 28 and 280 grams of crack cocaine were punishable with a statutory range of five to forty years under 21 U.S.C. § 841(b)(1)(B) (2011). Section 404(b) of the First Step Act of 2018 permitted inmates previously sentenced under pre-Fair Sentencing Act's penalties to file a sentence

reduction motion.

On March 21, 2019 Mr. Williams filed a motion for sentence reduction pursuant to the First Step Act. [R. 54, Motion for Reduction, PageID 256-63]. The motion was filed an "unopposed" by the government, as the parties jointly agreed Mr. Williams was eligible for a sentence reduction under the First Step Act. [R. 54, Motion for Reduction, PageID 256]. Due to the large volume of potentially-eligible inmates, the Office of the Federal Public Defender for the Northern District of Ohio was appointed to represent all inmates who were deemed eligible for a sentence reduction motion under the First Step Act. See General Order No. 2019-4 (N.D. Ohio, January 24, 2019). To efficiently address all potentially-eligible inmates, the Federal Defender's Office and the United States Attorney's Office conferred about a person's eligibility for sentence reduction prior to the filing of any motion. Consistent with this practice, counsel for Mr. Williams and the government discussed Mr. Williams's eligibility for a sentence reduction, and the parties jointly agreed Mr. Williams was eligible for a reduction.

The parties jointly agreed that Mr. Williams's offense involving 88.73 grams of crack cocaine no longer subjected him to a ten-year mandatory sentence under 21 U.S.C. § 841(b)(1)(A). [R. 54, Motion for Reduction, PageID 256]. As a result, he was subject to the statutory penalties under 21 U.S.C. § 841(b)(1)(B), which included a five-year mandatory minimum sentence. [R. 54, Motion for Reduction, PageID 261]. Further, the parties agreed his base offense level, for 88.73 grams of crack

cocaine, had been reduced from level 32 to 24. [R. 54, Motion for Reduction, PageID 261; see also U.S.S.G. § 2D1.1(c)(8) (offenses involving between 28 and 112 grams). As a result, the parties agreed Mr. Williams's sentencing guideline range had been reduced from 151 to 188 months (total offense level 29, Criminal History Category VI) to 77 to 96 months (total offense level 21, Criminal History Category VI). [R. 54, Motion for Reduction, PageID 261-62]. The parties jointly recommended the district court grant a reduction to 77 months – the low-end of his newly amended range. [R. 54, Motion for Reduction, PageID 262].

Four months after the filing of the unopposed motion for sentence reduction, the district court had not ruled on Mr. Williams's motion. Thus, on July 22, 2019, Mr. Williams filed a motion requesting a ruling on the pending motion for sentence reduction. [R. 55, Motion Requesting a Timely Ruling, PageID 264-65]. Thereafter, the district court issued an order directing the Warden of the institution to have Mr. Williams to be available by phone for a "re-sentencing hearing." [R. 56, Order, PageID 256].

On August 5, 2019, the district court held the hearing, with which Mr. Williams was present by phone from the institution. [R. 59, Transcript, PageID 274- 302]. Defense counsel reiterated the reductions in Mr. Williams's statutory penalties and sentencing guideline range. [R. 59, Transcript, PageID 276]. Defense counsel also detailed Mr. Williams's rehabilitative efforts while incarcerated, which included his taking over a dozen rehabilitative programs. [R. 59, Transcript, PageID 277]. Counsel also recounted a letter from Mr. Willams's

psychologist in the Bureau of Prisons, explaining that Mr. Williams suffers from post-traumatic stress disorder and has been receiving treatment. [R. 59, Transcript, PageID 277]. Mr. Williams asked the district court to grant a reduction based on Mr. Williams's rehabilitative efforts. [R. 59, Transcript, PageID 278]. Mr. Williams spoke, detailing remorse for his offense and that he had taken courses in victim awareness to fully understand the extent of his behavior. [R. 59, Transcript, PageID 279]. The government also requested the district court reduce Mr. Williams's sentence to 77 months of imprisonment. [R. 59, Transcript, PageID 281].

The district court then stated:

> Candidly, counsel, I'll tell both of you that I am – it's sad. It's unfortunate. It's sad and it's unfortunate that Mr. Williams may have been misled to think that some sentencing modification was in order here. It's really very unfortunate. Perhaps I should have ruled on this on the papers.
>
> This is not a crack cocaine case. When I say that, it is one count, but we have other offense conduct that makes this a far more serious type of activity. We also have a count for – related to heroin. We also have firearms. And we have an individual who is on bond and committing what was purportedly an aggravated murder and turns into a manslaughter.

> And I imposed a low-end guideline sentence. I guess I'm shocked at both sides here, shocked that the government isn't more concerned about the record of this defendant, shocked that the defendant's counsel would think that this is a case that would warrant a sentence down to 77 months at the low end of the guidelines, and shocked and saddened that Mr. Williams thinks that perhaps there is going to be some dramatic reduction in his sentence in this case based on this record.

[R. 59, Transcript, PageID 283-84].

The district court then recalled the facts of Mr. Williams's offense, in which a search warrant of his home yielded the seizure of guns and drugs. [R. 59, Transcript, PageID 284-85]. The district court then detailed Mr. Williams's prior offenses. [R. 59, Transcript, PageID 285-87].

The district court then revealed that at Mr. Williams's original sentencing hearing, the probation department recommended a sentence of 188 months, to which the district court stated, "I'll keep that in mind." [R. 59, Transcript, PageID 287]. The district court then talked about the "gun violence [that] has gone on in this country," concluding, "We have four guns here in the hands of a convicted felon. No. Sad. This is not a case for a sentencing reduction." [R. 59, Transcript, PageID 288-89].

In light of the district court's comments, defense counsel reiterated Mr. Williams's

rehabilitative efforts and that he had been continuously in custody since 2006. [R. 59, Transcript, PageID 290]. Defense counsel also explained that while the parties requested a sentence of 77 – the low-end of his amended guidelines range – the district court did not need to choose between 77 months or no reduction at all. [R. 59, Transcript, PageID 291].

Counsel pointed out the district court had broad discretion to fashion an appropriate reduction and could choose to reduce Mr. Williams's sentence to whatever term the court felt was justified. [R. 59, Transcript, PageID 291]. In response, the district court stated, "tell me specifically what he has done to be rehabilitated. He has been in custody. That's where he is at." [R. 59, Transcript, PageID 291]. Before counsel could respond, the district court stated, "Yes. He may be rehabilitating himself while he's in custody. Sure. It's easy to do that when you're in custody." [R. 59, Transcript, PageID 292]. The district court, once again, detailed the facts of Mr. Williams's original charge and his prior record. [R. 59, Transcript, PageID 292-93]. The district court concluded the hearing, stating it would issue a written order on the matter. [R. 59, Transcript, PageID 301].

On October 2, 2019, the district court issued a written order denying Mr. Williams any reduction under the First Step Act. [R. 60, Order, PageID 303-307]. The order detailed Mr. Williams's 2015 motion for sentence reduction motion under the previous retroactive guideline amendments, and quoted its reasoning for denying any reduction at that time. [R. 60, Order, PageID 304-05]. The district court also

attached an exhibit to the order – the criminal history portion of Mr. Williams's original presentence report. [R. 60, Order, PageID 306; R. 60-1, Exhibit to Order, PageID 308-14]. The Order concludes:

> The Court is mindful of its discretion to reduce Williams' sentence. The Court has also taken into account Williams' assertions that he has bettered himself through educational and vocational classes within prison. Unfortunately, Williams' history outside of incarceration undermines any assertion that a sentence reduction is warranted. Williams has only ever demonstrated an inability to comply with the law. Thus, the Court's 151-month sentence remains sufficient but not greater than necessary to protect the public.

[R. 60, Order, PageID 307]. The Sixth Circuit affirmed on the same grounds as the district court, save for a dissent.

The dissent stated—

> Judge Henry Friendly once reminded us that the 'abuse of discretion' standard does not give nearly so complete an immunity bath to the trial court's rulings as counsel for appellees would have reviewing courts believe. Indiscretion About Discretion, 31 Emory L.J. 747, 784 (1982). In this case, the majority draws

> the water anyways, and keeps Larry Williams in prison for twice as long as Congress and the Sentencing Guidelines say he should be. [T]he district court's denial of Williams's First Step Act motion lacked a sufficiently compelling justification for maintaining a sentence that is now twice the guideline range set by Congress[.]

Opinion at pg. 11, internal quotations and citations omitted.

The dissent further offered that, "[t]he First Step Act itself indicates that Congress contemplated close review of resentencing motions." With that in mind, the dissent reasoned that granting relief was appropriate for three reasons. According to the Dissent, "[f]irst, the district court cannot be said to have conducted a complete review of the resentencing motion on the merits." *Id.* at pg. 14, internal quotations omitted. "Second," according to the dissent, "...[the] district court did not offer a sufficiently compelling rationale for why a sentence twice as long as that recommended by the amended sentencing guidelines[fit Williams's cause.]" *Id.* at pg. 15. And "[t]hird," the Dissent identified that "...the district court inexplicably dismissed the significance of the parties jointly requesting a sentencing reduction—and lashed out at them for filing a motion at all." *Id.* at pg. 19.

That lone vote, of course, was insufficient to reverse the district court's decision.

Mr. Williams now appeals, urging this Court to assume jurisdiction.

Reasons for Granting the Writ of Certiorari

What are the scope and limits of a District Court's discretion in denying an unopposed motion for sentence reduction under the First Step Act?

Following this Court's decision in *U.S. v. Booker*, 543 U.S. 220 (2005) and its progeny, in order for a district court to deviate from the U.S. Sentencing Guidelines, the court must mete out the applicable factors and elements for a departure or a variance and support its decision with a rational basis. The First Step Act's sentencing reduction portion effectively sets new discretionary guidelines, in applicable cases, falling beneath a defendant's original guidelines. It follows logically, then, that in order to deny a petition for resentencing under the First Step Act, particularly an unopposed one, a district court must mete out any applicable factors and elements for a departure or a variance and support its decision with a rational basis.

The district court abused its discretion by improperly applying the law in several respects. The district court repeatedly and solely relied on the facts of Mr. Williams's offense conduct and criminal history, and failed to account for Mr. Williams's rehabilitative efforts. In fact, the district court improperly discounted his rehabilitative efforts, questioning the value of an inmate's rehabilitation generally. Further, the district court improperly relied on the sentencing recommendation of the probation officer from Mr. Williams's original sentencing hearing twelve years earlier. Lastly, the

district court failed to appreciate its discretion to grant a sentence reduction, instead believing it either had to accept the joint recommendation of the parties for a reduction to 77 months, or conversely give no reduction at all.

For these reasons, the district court abused its discretion in denying Mr. Williams's sentence reduction motion, and this Court should vacate the district court's denial of his motion to reduce his sentence and remand for further proceedings.

Standard of Review

I. The district court abused its discretion in denying Mr. Williams's motion for a sentence reduction under the First Step Act by improperly applying the law.

A. Standard of Review

The First Step Act of 2018 allows the district court to reduce prison sentences for "covered offenses." Pub. L. No. 115-391, Sec. 404, 132 Stat. 5194 (2018). A covered offense is any statutory penalty that was modified by sections 2 or 3 of the Fair Sentencing Act of 2010. Pub. L. 111-220, 124 Stat. 2372. The question of whether a defendant is legally eligible for a sentence reduction under Section 404 of the First Step Act is a question of law.

While the parties agree Mr. Williams is eligible for a sentence reduction under the First Step Act, the First Step Act does not require the district court to reduce the sentence of an eligible defendant. The granting of a reduction is within the discretion

of the district court. A district court's decision to deny a sentence reduction is reviewed for an abuse of discretion. See *United States v. Metcalfe*, 581 F.3d 456, 458 (6th Cir. 2009), when a statute permits, but does not require, the district court to reduce a sentence its decision to grant or deny a motion for reduction is reviewed for an abuse of discretion.

"A district court abuses its discretion when it relies on clearly erroneous findings of fact, applies the law improperly, or uses an erroneous legal standard." *Id.*, citing *United States v. Lineback*, 330 F.3d 441, 443 (6th Cir. 2003). "We have defined an abuse of discretion as 'a definite and firm conviction that the trial court committed a clear error of judgment." *United States v. Gillis*, 592 F.3d 696, 698 (6th Cir. 2009), quoting *United States v. Carter*, 463 F.3d 526, 528 (6th Cir. 2006), internal quotations omitted.

That being said, the sum of the argument below demonstrates that the non-erroneous legal standard entails more than simple discretion. In order to mete out a proper decision, the district court needs to consider all of the applicable sentencing jurisprudence, particularly in denying a First Step reduction, that it would in granting an upward departure or upward variance. This follows because, as this brief proceeds to relate, that is what a trial court is effectively doing in denying a motion for reduction under the First Step Act. And for that reason, the petitioner posits a standard of abuse of discretion "with bite." *Supra.*

B. Argument

The Fair Sentencing Act of 2010 changed the

statutory penalty for Mr. Williams's crack cocaine offense, and Section 404 of the First Step Act permitted him to apply for a sentence reduction motion. Pub. L. No. 115-391, § 404, 132 Stat. 5194 (2018). There can be no debate that Mr. Williams's drug offense originally subjected him to a statutory range of ten years to life, under 21 U.S.C. § 841(b)(1)(A), and that the First Step Act retroactively reduced his statutory range to five to forty years under 21 U.S.C. § 841(b)(1)(A). [R. 54, Motion for Reduction, PageID 261]. While his original sentencing guideline range was 151 to 188 months, under the current sentencing guidelines, his total offense level went down eight levels, resulting in a range of 77 to 96 months. [R. 54, Motion for Reduction, PageID 261]. As such, the Mr. Williams filed a motion for sentence reduction, which the government did not oppose; in fact, the parties jointly requested the district court reduce Mr. Williams's sentence to 77 months. [R. 54, Motion for Reduction, PageID 262].

The district court held a hearing, in which defense counsel detailed to the district court Mr. Williams's rehabilitative efforts, which included completing over a dozen rehabilitative programs during his incarceration, and included classes on how Mr. Williams's offenses impacted the community and his victims. [R. 59, Transcript, PageID 277, 279]. Further, Mr. Williams had been receiving mental health counseling in the prison, and provided a letter from his psychologist detailing his treatment for post-traumatic stress disorder. [R. 59, Transcript, PageID 277]. Defense counsel asked the district court to grant a sentence reduction based

on both Mr. Williams's rehabilitative efforts and the reduction in his sentencing guideline range. [R. 59, Transcript, PageID 278]. The government joined in Mr. Williams's request for a reduction to 77 months. [R. 59, Transcript, PageID 281].

Despite the joint request of the parties to reduce Mr. Williams's sentence to 77 months, the district court denied any reduction to Mr. Williams. At the hearing, the district court stated it was "shocked" and "saddened" that each of the parties would request the reduction. [R. 59, Transcript, PageID 283-84]. The district court then explained its outrage by detailing the facts of Mr. Williams's offense and his prior convictions. [R. 59, Transcript, PageID 284-87]. Throughout the hearing, the district court repeatedly harkened back to the facts of his original offense and his original arrest record. [R. 59, Transcript, PageID 288, 292-93, 295-96, 299-30]. In its written order, the district court again relied on the facts of Mr. Williams's offense and his criminal record, even attaching the criminal history portion of his original presentence report as an exhibit. [R. 60, Order, PageID 306; R. 60-1, Exhibit to Order, PageID 308-14]. The district court ultimately concluded that no reduction was warranted due to his prior offenses, and that the original 151-month sentence "remains sufficient but not greater than necessary to protect the public." [R. 60, Order, PageID 307].

The district court's holding constitutes an abuse of discretion in several respects by failing to properly apply the law. Various courts have agreed that "[t]he text of the First Step Act, read in conjunction with other sentencing statutes, requires

the Court to consider all relevant facts, including developments since the original sentence." *United States v. Rose*, 379 F. Supp. 3d 223, 233 (S.D.N.Y. 2019); see also, *e.g.*, *United States v. Payton*, No. 07-20498, 2019 WL 2775530, *3-*4 (E.D. Mich. Jul. 2, 2019), collecting cases holding that the "First Step Act vests the Court with broad discretion to resentence defendants considering the § 3553(a) factors, including the case law and Guidelines in effect today."; *United States v. Boulding*, 379 F. Supp. 3d 646, 656-57 (W.D. Mich. May 16, 2019), court exercises discretion to reduce sentence after reviewing the record, the defendant's post-sentencing behavior, and the new guidelines; *United States v. Mitchell*, No. 05-00110, 2019 WL 2647571, *7-*9 (D.D.C. Jun. 27, 2019), same; *United States v. Nance*, No. 8:08-CR-449, 2019 WL 2436210, *3 (D. Neb. Jun. 10, 2019), same.

In contrast to the cases cited above, the district court's denial of Mr. Williams's motion for sentence reduction does not consider the relevant "developments since the original sentence." Since his original sentencing hearing in 2008, Mr. Williams's statutory range has gone down, his sentencing guideline range has been significantly reduced, and he has made commendable rehabilitative efforts during his incarceration. The district court, however, did not focus of any of these developments since his original sentence, but instead focused only on the facts that had not changed since his original sentence – his offense conduct and his criminal history. The facts of his offense and his criminal record were both things known at the time of his original sentence, and resulted in a sentence of 151

months of imprisonment, the low-end of his guideline range at the time.

To be clear, the district court's order did indicate it had "taken into account Williams' assertions that he has bettered himself through educational and vocational classes within prison." [R. 60, Order, PageID 307]. This single sentence in the written order, however, must be considered against the entire record. At the hearing on the sentence reduction motion, the district court expressed grave doubt over whether Mr. Williams could demonstrate any rehabilitation while in the Bureau of Prisons. When defense counsel asked the district court to consider his rehabilitative efforts, the district court responded, "[h]e has been in custody. That's where he is at . . . Yes. He may be rehabilitating himself while he's in custody. Sure. It's easy to do that when you're in custody." [R. 59, Transcript, PageID 291-92]. Read in context, the district court's comments serve to de-value rehabilitative programs and seem to indicate the court's belief thatan inmate's use of such programs is worthless.

The Supreme Court, in *Pepper v. United States*, 131 S. Ct. 1229 (2011), held that a defendant's post-sentencing rehabilitation is a valid consideration under the statutory sentencing factors set forth in 18 U.S.C. § 3553, and could constitute ground for a downward variance. The Supreme Court made clear that post-sentencing rehabilitation "sheds light on the likelihood that he will engage in future criminal conduct, a central factor that district courts must assess when imposing sentence." *Pepper*, 131 S. Ct. at 1241, citing 18 U.S.C. § 3553(a)(2).

Further, post-sentencing conduct is relevant to the defendant's "background, character, and conduct," and is consistent with 18 U.S.C. § 3661. *Pepper*, 131 S. Ct. at 1242. While a court is not required to consider post-sentencing conduct, the district court in the instant case did not simply indicate it was declining to consider Mr. Williams's post- sentencing conduct in determining whether a reduction was warranted. Instead, the district court went so far as to doubt the effectiveness any rehabilitative programs may have. The district court's comments undercutting the value of an inmate's rehabilitation are evidence of the district court's abuse of discretion.

The district court further abused its discretion by relying on improper information in determining whether a reduction was warranted. During the hearing, the district court revealed that at Mr. Williams's original sentencing hearing, the probation department recommended a sentence of 188 months, the high-end of his sentencing guideline range at the time. [R. 59, Transcript, PageID 287]. The district court ultimately did not go along with the probation department's recommendation, choosing to impose a sentence at the low-end of the range, 151 months. Twelve years later, however, in evaluating whether a sentence reduction was warranted, the district court stated, "I'll keep [the probation officer's recommendation] in mind." [R. 59, Transcript, PageID 287]. The probation officer's recommendation at the original sentencing, which was not even adopted by the district court, has no bearing upon whether a sentence reduction is warranted under the First Step Act twelve years later. Said

recommendation has no connection to the statutory sentencing factors set forth in 18 U.S.C. § 3553(a). The district court's reliance on this recommendation from the original sentencing further demonstrates how the district court improperly applied the law and committed an abuse of discretion.

The district court further abused its discretion by failing to appreciate its discretion in the ability to fashion an appropriate sentence reduction. The defense and the government jointly recommended the district court grant a reduction to the low-end of Mr. Williams's amended sentencing guideline range, that being a reduction from 151 months to 77 months. Despite the joint recommendation by the defense and prosecution, the district court expressed utter outrage towards this request. [R. 59, Transcript, PageID 283]. The district court stated, "I guess I'm shocked at both sides here, shocked that the government isn't more concerned about the record of this defendant, shocked that the defendant's counsel would think that this is a case that would warrant a sentence down to 77 months at the low end of the guidelines." [R. 59, Transcript, PageID 284]. Recognizing there was no chance the district court would accept the joint recommendation of the parties, defense counsel pointed out the district court had the authority to impose a reduction to any term of months within the statutory range and was not bound by the request of the parties. [R. 59, Transcript, PageID 291]. Defense counsel made clear the district court was not bound either to impose a reduction to 77 months or not to impose any reduction at all. [R. 59, Transcript, PageID 291]. In response, the district court went on

to question the value of Mr. Williams's rehabilitative efforts, as detailed *supra*, and then to detail prior criminal record. [R. 59, Transcript, PageID 291].

The record does not reflect that the district court demonstrated the awareness that it had the discretion to fashion a reduction to something other than what was requested by the parties. This Court has held in the sentencing context, a district court imposes an unreasonable sentence if the district court's fails to appreciate the scope of its discretion, such as appreciating the non-mandatory nature of the guidelines. *United States v. Davis*, 458 F.3d 491, 495 (6th Cir. 2006). Similarly, the district court imposed an unreasonable decision in the instant case by failing to appreciate its discretion to impose a reduction to whatever sentence the court felt it was appropriate was an abuse of discretion.

Given the totality of the district court's statements, the district court failed to properly apply the law and therefore committed an abuse of discretion. The crack cocaine statutory penalties were amended because Congress had determined the federal crack cocaine penalties were disproportionately high as compared to the powder cocaine penalties. See *Dorsey v. United States*, 567 U.S. 260 (2012). While the Fair Sentencing Act of 2010 sought to better equalize the statutory penalties going forward, the Fair Sentencing Act did not provide a mechanism for relief for those who continued to languish under the old crack cocaine statutory penalties. It took eight years to pass legislation to rectify this problem, which came with the First Step Act. The First Step Act permitted those who continued to serve sentences under the

disproportionately high crack cocaine penalties to seek relief in the form of a sentence reduction motion. Mr. Williams, whose statutory penalties and sentencing guideline range had both gone down, sought relief under this new law in the form of a sentence reduction motion. Despite the draconian and outdated sentence, which he continued to serve, along with his significant rehabilitative efforts in prison, the district court denied him any relief.

The district court's approach generally towards First Step Act sentence reduction motions also bears noting. Following the passage of the First Step Act, it was clear that a large volume of inmates would be seeking sentence reduction motions under this legislation. Accordingly, the Office of the Federal Public Defender for the Northern District of Ohio was appointed to represent all inmates who were deemed eligible for a sentence reduction motion under the First Step Act. See General Order No. 2019-4 (N.D. Ohio, January 24, 2019). To efficiently address the volume of inmates seeking relief, the Federal Defender's Office and the United States Attorney's Office conferred about a person's eligibility for a sentence reduction prior to the filing of any motion. The two offices agreed upon a wide number of motions to be filed as "unopposed" to demonstrate to the court that the inmate was eligible for relief under the First Step Act.

To date, as noted in the proceedings before the Sixth Circuit, the Federal Defender's Office for the Northern District of Ohio has filed 65 motions for sentence reduction under the First Step Act. Of those motions, 37 were filed as being "unopposed" by the United States Attorney's Office. Of the 37

unopposed motions, four were filed with United States District Judge John R. Adams, which included Mr. Williams's motion in the instant case. Despite being unopposed, of the four unopposed motions, only one has been granted; two have been denied (which includes the instant motion), and one has remained pending since February of 2019. By contrast, of the other 33 unopposed sentence reduction motions filed with the other judges of the Northern District of Ohio, all were granted. The district court's approach towards such unopposed and jointly-made recommendations, as compared to the other judges within the Northern District of Ohio, should be considered in determining whether the district court abused its discretion in denying Mr. Williams's motion for sentence reduction. In consideration of this, as well as the other reasons detailed above, the district court abused its discretion by denying Mr. Williams's motion for sentence reduction.

Given the foregoing, the discretionary-sounding language of the First Step Act seems much less so. The Act directs that a district court "may" reduce a sentence, and the Act has its subsection, directing that none of its provisions "...shall be construed to require a court to reduce any sentence." *Id.* § 404(c). To that end, this petition is not a request to this Court to examine linguistic quantum particles or to decide that this case represents the unique circumstance in which "may" means "shall." The point, however, of this argument is that in order to decline reduction, the logical exercise of discretion requires the same consideration a district court would give to a departure or variance in any other

sentencing decision. In other words, following this Court's decision in *Booker*, 543 U.S. at 220 and its progeny, in order for a district court to deviate from the U.S. Sentencing Guidelines, the court must mete out the applicable factors and elements for a departure or a variance and support its decision with a rational basis. The First Step Act's sentencing reduction portion effectively sets new discretionary guidelines, in applicable cases, falling beneath a defendant's original guidelines. It follows logically, then, that in order to deny a petition for resentencing under the First Step Act, particularly an unopposed one, a district court must mete out any applicable factors and elements for a departure or a variance and support its decision with a rational basis.

Conclusion

Wherefore, the defense prays this Court take jurisdiction over this cause and hear it on its merits.

Respectfully Submitted,

Rhys B. Cartwright-Jones
Counsel of Record
Ronald D. Yarwood
42 N. Phelps St.
Youngstown, OH 44503-1130
330-757-6609, tel.
866-223-3897, fax
rhys@cartwright-jones.com
Counsel for Petitioner