

ORIGINAL

No. 20-5469

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OFFICE OF THE CLERK
SUPREME COURT U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ALFONZO TRAYMAYNE LEE — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ROMAN L. HRUSKA U.S. COURTHOUSE
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ALFONZO TRAYMAYNE LEE
(Your Name)

P.O. Box 1009, Welch, WV
(Address)

Welch, West Virginia 24801
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether giving the District court discretion to grant or deny a sentencing reduction, pursuant to the retroactivity of Amendment 750, violates the Petitioners Fourteenth Amendment, in relevant part, Equal Protection of the Law?

Whether considering circumstantial evidence found at sentencing as grounds to deny the Petitioner relief pursuant to the Fair Sentencing Act, violates the Petitioners Fifth Amendment, in relevant part, Due Process of Law?

Whether the Phrase, "discretion to grant or deny a sentencing reduction", applies 18 USC 3553(a) factors or circumstantial evidence found at sentencing that was believed to be facts?

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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

☒ For cases from **federal courts**:

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

☐ reported at No Appellate Court opinion; 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☐ is unpublished.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 _____ 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 16, 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: May 21, 2020, 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).

☐ 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

Amendment 750
Civil Rights Act of 1964
First Step Act of 2018
18 U.S.C. 3553(a)
42 U.S.C. 1981

Fifth Amendment
Fourteenth Amendment

STATEMENT OF THE CASE

On April 21, 2005, an indictment was filed charging ALFONZO LEE with conspiracy to distribute crack cocaine, a violation of 21 USC 846, and brandishing a firearm in connection with a drug trafficking crime, in violation of 18 USC 924(c)(1)(A)(ii). The petitioner proceeded to trial and the Jury found that he was responsible for the distribution of 50 grams of cocaine base. The Pre-Sentencing Investigation Report determined that petitioner was responsible for 283 grams of cocaine base. Unchallenged by the courts appointed attorney, Michael D. Nelson, the district court adopts the PSIR findings at sentencing and sentenced the petitioner to 262 months on the drug charge and a consecutive 84 months for the gun.

On 11-20-06 a Writ of Certiorari was filed, See 06-7591 as to the petitioner. On 1-17-08, this court vacated the Judgment and remand the case back in light of *Kimbrough v. United States*, 552 U.S. ____ (2007). Following remand, the petitioner was resentenced to 168 months on the drug charge and a consecutive 84 months for the gun.

After Congress passed the First Step Act of 2018, the petitioner filed a motion for a sentencing reduction pursuant to Section 404 of the Act. The government objected, arguing that the petitioner is not entitled to re-sentencing under the First Step Act because of the alleged 283 grams of cocaine base found in the PSIR. The government argument was ("this court is entitled to consider all the cocaine base the defendant was found responsible for, 283 grams"). The district court apparently accepted the government's argument that the petitioner was not entitled to relief under The First Step Act due to circumstantial evidence found in the PSIR, because the petitioner was denied relief under the First Step Act. The Appellate court summarily affirmed the district courts decision. This petition follows.

THE SUPREME COURT OF THE UNITED STATES

ALFONZO TRAYMAYNE LEE,
Petitioner,

V.

UNITED STATES OF AMERICA
Respondent.

Memorandum of Law in Support of
the Application for Writ of Certiorari

MEMORANDUM OF LAW IN SUPPORT
OF THE
APPLICATION FOR WRIT OF CERTIORARI

ALFONZO TRAYMAYNE LEE
REG. NO.: 20059-047
F.C.I. McDowell
101 Federal Drive.
Welch, West Virginia 24801

BY: *Alfonzo T. Lee*

I.

Whether giving the district court discretion to grant or deny a sentencing reduction, pursuant to the retroactivity of Amendment 750, violates the Petitioners 14th Amendment, in relevant part, Equal Protection of the Law?

Argument

Giving courts discretion to grant or deny a sentencing reduction pursuant to the retroactivity of Amendment 750 violates the Petitioners Equal Protection Clause of the 14th Amendment.

Grounds:

1. Courts do not enjoy the benefit of discretion to apply Amendment 750 since its enactment. Courts are bound by law to honor Congress will to implement fairness in what was considered to be punishment grossly disproportionate to the severity of the crime. A ratio disparity that was determined to be unfair, unjust, and unjustified by Law, and in the eyes of many, racially bias.
2. All persons within the jurisdiction of the United States shall have the same rights in every State and Territory. . . to the full and equal benefit of all laws and proceedings. . . of every Kind, and to no other, in relevant part.
3. The Supreme Court views as to constitutionality, construction, and

application of 42 U.S.C.S. 1981, provides for equal rights as to such matters, . . . and legal proceedings, 105 L.Ed 2d 737.

4. In 2010, Congress, responding to criticism that the 100-to-1 ratio was "too high and unjustified," Dorsey v. United States, 567 U.S. 260, 268 (2012), enacted the Fair Sentencing Act, 124 Stat. 2372. The Act reduced the base-powder cocaine disparity by raising the cocaine base weight thresholds for triggering five and ten year mandatory minimum sentences. See Amend. 750, Sec. 2 (a), (b); Dorsey, 567 U.S. at 264.

5. In 2018, Congress legislated retroactively the Fair Sentencing Act, thereby providing a remedy for the persons that were sentenced prior to its enactment who had been wrongfully subject to an unjustified sentence. See Section 404 of the First Step Act, specifically, part (b).

6. In doing so, circuit court opinions maintain that the First Step Act applies to offenses, not conduct. See Wirsing, 943 F.3d 175, 185 (4th cir 2019), and United States v. McDonald, 944 F.3d 769, 772 (8th cir. 2019). Then it determined that the phrase "Statutory penalties for which were modified in the definition of Covered Offense in the First Step Act applies to the term Federal Criminal Statute" (i.e., the Statute of Conviction), See Jackson, 945 F.3d 315, 320 (5th cir. 2019); United States v. Williams, 402 F. Supp. 3d 442 (N.D. Ill. 2019); and United States v. McDonald, 944 F.3d 769, 772 (8th cir. 2019). And also that the phrase, "A court that imposed a sentence for a Covered Offense MAY. . . impose a reduced sentence", give Judges discretion to grant or deny a sentence reduction.

7. The word "may" is unreasonable; contradicts the retroactive effect of the Act, and violates the Petitioners equal protection of the 14th Amendment. "Any violation or denial of equal protection by the Federal government is treated as a violation of the Due Process Clause of the Fifth Amendment," 347 U.S. 497, 499; 55 N.C.L. Rev. 540 (1977).

8. The Fair Sentencing Act controls here rather than the presumption of courts discretion. "Congress pass laws to affirmatively protect the constitutional rights of citizens and to guarantee equal protection of the Laws." See Civil Right Act of 1964.

9. When Congress passed into law the Fair Sentencing Act, its intent was to eliminate the effects of the 100-to-1 ratio because it suggest racial bias, "and racial disparities in sentencing due to higher prevalence of cocaine base in African-American communities", See Dorsey V. United States, 567 U.S. 260, 266-68, 132 S.Ct. 2321, 183 L.Ed 2d 250 (2012)

10. As an American of African descent that was sentenced prior to the enactment of the Fair Sentencing Act, the Petitioner is being subject to an unjustified racial disparity.

11. Congress' evident purpose to apply pre-Fair Sentencing Act law retroactively indicated that it affirmatively intended sections 2 and 3 of Amendment 750 to apply to cases arising before its enactment; moreover, there is a "presumption in favor of application of retroactive statutes" to cases arising before their enactment, Rivers V. Roadway, 511 US 304, in pertinent part.

12. The Petitioner is entitled to a sentencing reduction that reflects the retroactive effect of the Fair Sentencing Act. Anything contrary prescribes factual error that exposes the Petitioner to a complete loss of his personal liberty, due to courts discretion, away from his home, family, and friends.
13. The Petitioner has a 14th Amendment right to be protected from a ratio disparity that was found to be unfair, unjust, and unjustified by Law. The Equal Protection Clause supports this claim.

For the above reasons, the Petitioner ask that this court grant review to answer this constitutional question and resolve this matter.

II.

Whether considering circumstantial evidence found at sentencing as ground to deny the Petitioner relief pursuant to the Fair Sentencing Act, violates the Petitioners Fifth Amendment, in relevant part, Due Process of Law?

Argument

Considering circumstantial evidence found at sentencing as ground to deny the Petitioner relief pursuant to the Fair Sentencing Act violates the Petitioners Fifth Amendment, in relevant part, Due Process of Law.

Grounds:

1. When the district court used conduct found at sentencing to deny the Petitioner relief under the Fair Sentencing Act, the integrity of the criminal proceeding was disrupted, and therefore compromised.
2. Due Process, as an expression of fundamental procedural fairness, requires a more stringent standard for criminal cases than for ordinary civil litigations, In re: Winship, 397 US 372.
3. Congress stipulated Covered Offense, which is defined, Statute of Conviction "to avoid the delay or expense that might result from the full enforcement of procedural rights requiring the exhaustive presentation of evidence or validation of facts not in dispute", 566 P. 2d 133, 134; 213 S.E. 2d 428.
4. When Congress stipulated Covered Offense it "does not require consideration or mutuality to be enforceable", 97 N.E. 1042, 1047; 73 AM. Jur. 2d 536.
5. Following Congress lead, circuit court expressed how the First Step Act applies to offenses, not conduct, United States V. McDonald, 944 F.3d 769, 772 (8th cir. 2019), because considering conduct found at sentencing violates the criminal proceeding, which in turn, violates Due Process.
6. The means of due process of law is that the government 'must'

proceed according to the law. It was also meant to make certain that person would be govern by law, not the arbitrary fiat of court power.

7. Due Process of Law was first expressly introduced into American Jurisprudence in the Fifth Amendment to the Constitution which provides that, "nor shall any person be deprived of life, liberty, or property, without due process of law;" This provision is applicable only to the actions of the federal government. 7 Pet. 243 (1833).

8. The requirement of due process is not a fair-weather or timid assurance. It must be respected in periods of calm and in times of trouble; it protects aliens as well as citizens.

9. When the district court took the Petitioners criminal process and applied civil standards as a remedy to deny the relief requested, the court was acting independent to the will of Congress and the authority of its circuit court without any regard for due process.

10. The court lack of accord with the law imposed for the sake of uniformity, is irregular.

For the above reasons the Petitioner ask this court to grant review to answer this constitutional question and resolve this matter.

III.

Whether the Phrase "discretion to grant or deny a sentencing reduction,"

applies 18 U.S.C. 3553(a) factors or circumstantial evidence found at sentencing that was believed to be facts?

Argument

The phrase, "discretion to grant or deny a sentencing reduction" applies to the 18 USC 3553(a) factors, not circumstantial evidence.

Grounds:

1. The phrase, "discretion to grant or deny a sentencing reduction", does not apply to circumstantial evidence found at sentencing that was believed to be facts. Because, if so, it would taint the effect of the term Covered Offense, make it ambiguous, and void for vagueness.
2. Congress implementation of Covered Offense clarifies any ambiguity. It's intent was to prevent persons like the petitioner from being subject to courts discretion based on pure speculation without foundation because doing so would be violative of due process.
3. The circuit courts have defined Covered Offense, and in doing so, it's been expressed how the First Step Act applies. (The First Step Act applies to offenses, not conduct, United States V. McDonald, 944 F.3d 769, 772 (8th cir. 2019), and it is the defendants statute of conviction that determines his eligibility for relief, United States V. Jackson, 945 F.3d 315, 320 (5th cir. 2019)).

4. A clear distinction between the First Step Act and the definition of the term Covered Offense is obvious. The first part express how the Act applies to offenses, not conduct, and the latter defines Covered Offense as being the Statute of Conviction.
5. No thing in the Act nor how courts define the Act instructs or authorizes the court to consider conduct.
6. United States v. Williams, 943 F.3d 841 (8th cir. 2019) instructs the court to consider the 3553(a) factors, "courts should consider the 3553(a) factors in determining whether a reduction is warranted and the extent of such reduction," Williams, 943 F.3d 841.
7. Other controlling case law instructs courts to apply the offense, not conduct, and it is the defendants Statute of Conviction that determines eligibility. United States v. McDonald, 944 F.3d 769 (8th cir. 2019).
8. When the court applied its discretion to the petitioners conduct, it violated due process, and the strict construction of how the Act is to be applied.
9. With regards to 18 USC 3553(a), "the courts are directed, in determining a particular sentence to be imposed, shall consider the Kinds of sentence and the sentencing range establish for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines." 3553(a).
10. In Statutory construction, the expression of one thing generally excludes another.

Conclusion

Section 404 of the First Step Act applies to offenses, not conduct, and it is the Petitioners Statute of Conviction that determines his eligibility. Section 404 also serves as a vehicle that leads to Section 2 and 3 of the Fair Sentencing Act, which requires a sentencing court to strike 50 grams of cocaine base and insert 280 grams. The Petitioners Covered Offense is 50 grams of cocaine base, his Statute of Conviction has been modified, the modification, as of 2018, has been made retroactive. He is entitled to relief. Failure to apply relief violates his equal protection from a ratio disparity that found to be unfair, unjust, and unjustified, and in turn, creates the denial of due process of law as required by the Fifth Amendment, in relevant part.

For the above reasons the petitioner ask that this court grant review to answer the abovementioned questions

Respectfully Submitted,

/s/ ALFONZO LEE

20059-047

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