

No.

20-6243

In The
Supreme Court of the United States

ORIGINAL

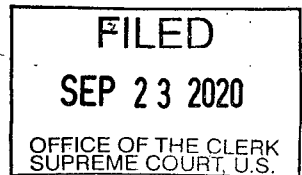
UNITED STATES OF AMERICA,

Respondent,

V.

OKEIBA SADIO,

Petitioner,



On Petition for a writ of Certiorari
to the United States Court of
Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

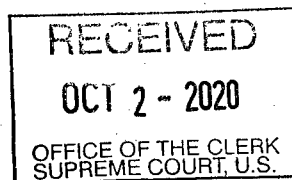
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QUESTIONS PRESENTED

- (1) Whether the Second Circuit Court of Appeals Wrongly dismiss Mr. Sadio's Appeal with out no Briefs being filed or hearing any arguments, violating Mr. Sadio's Constitutional right for due process, when Clearly in fact and in Law Mr. Sadio is eligible for the first step Act, and should be resentenced for his "Covered offense"
- (2) There is a need for the United States Supreme Court to resolve the Conflict amongst the District and Appellate Courts to Provide guidance as to what makes a person eligible for the first step Act
- (3) Whether the Second Circuit Court of Appeals Violated Petitioner Mr. Sadio's Sixth Amendment Constitutional Right to Counsel, by denying legal representation, If Petitioner Couldn't afford legal representation one should be provided.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Oreiba Sadio and the United States of America.

TABLE OF CONTENTS

Questions Presented	1
Parties To The Proceedings Below	1
Table of Contents	2
Table of Authorities	3
Petition For A Writ of Certiorari	4
Opinions Below	4
Jurisdiction	4
Statement of The Case	5
REASON For Granting writ Point one	7
REASON For Granting writ Point two	10
REASON FOR Granting writ Point Three	12
Conclusion	14

APPENDIX

TABLE OF AUTHORITIES

pg #

CASES

Apprendi v New Jersey	530 U.S. 466 (2000)	8
Alleyne v United States	133 S.Ct. 2151	8
United States v Brown	U.S. Dist LEXIS 11662 Jan 22, 2020 (2nd cir)	9
United States v Bowman	U.S. Dist LEXIS 15642 Jan 29 (2nd cir 2020)	9
United States v Luna	U.S. Dist LEXIS 14545 (2nd cir 2020)	9
United States v Harris	U.S. Dist LEXIS 5132 (2nd cir 2020)	8
United States v Powell	U.S. Dist LEXIS 171895 (2nd cir 2019)	9
United States v Gore	371 Supp. 3d 524 U.S. Dist LEXIS 35838 (2019)	8
United States v Williams	U.S. Dist LEXIS 111489, 2019 WL 2865226 at *2 (S.D.N.Y. July 3, 2019)	8, 11
United States v White	U.S. Dist LEXIS 119164, 2019 WL 3228333 at *2 n.1 (S.D. Tex July 17, 2019.)	11
United States v DOHERTY	404 U.S. 28	12
Haines v Kerner	404 U.S. 519	13

RULES

Rule 44 of the Federal Rules of Criminal Procedure and Criminal Justice Act	12
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STATUTES

Public Law 111-220, 124 Stat. 2372	
18 U.S.C. § 3006A	12

Other "Covered Offense"

First Step Act. Section 404(a)	
Section 2 and 3 of Fair Sentencing Act 2010	
Fair Sentencing Act 2010	

PETITION FOR A WRIT OF CERTIORARI

Okeiba Sadio respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Second Circuit in this case

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit is unpublished

The opinion of the United States district court is unpublished.

JURISDICTION

The judgement of the United States Court of Appeals for the Second Circuit was Entered on June 25, 2020. This petition is timely filed within 90 days statutory time limitation. This court has jurisdiction to review the judgement below on a writ of Certiorari pursuant to Title 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Mr. Sadio was charged in two counts of a twelve-count indictment with conspiring to possess with intent to distribute, and possessing with intent to distribute fifty grams or more of cocaine base. Mr. Sadio was convicted after a jury trial of conspiring to possess with intent to distribute, and possessing with intent to distribute fifty grams or more of cocaine base. With the jury finding no specific amount, just the covered offense fifty grams or more, Mr. Sadio was sentenced to 240 months, in violation of 21 U.S.C. § 841(a)(1) Count one, and on Count twelve Mr. Sadio

possessed with intent to distribute fifty grams or more in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). Mr. Sadio was charged December 3, 2009. Mr. Sadio was sentenced January 6, 2012. The Fair Sentencing Act drops Mr. Sadio's mandatory minimum to five years for fifty grams or more of cocaine base. The Court erred in not changing Mr. Sadio's offense level, which under the Fair Sentencing Act fifty grams or more of cocaine base falls under 280 grams of cocaine base which is an offense level 24. With a criminal history at VI falls between 100 to 125 months. Mr. Sadio files motion to reduce sentence under Section 404 of the First Step Act arguing "Covered offense", which he is still eligible for relief under the first step Act because Mr. Sadio was not charged after the Fair Sentencing Act, but before the Act of 2010, remember Mr. Sadio was indicted on December 3, 2009. Mr. Sadio's motion for the first step Act was denied in district court October 17, 2019, A timely notice of appeal was filed, along with asking the Second Circuit Court of Appeals for counsel for representation in the matter (5)

Second Circuit Court of Appeals dismissed the Appeal with out any briefs being filed or even hearing any arguements, Saying Appeal has no merit, it Lacks arguable basis either in Law or in Fact, Also denying Mr. Sadio Counsel, which Violates Mr. Sadio's Sixth Amendment right. Any case that was brought in front of any Judge who granted the fair Sentencing Act of 2010, The first Step Act Section 404, when Changing there mandatory minimums, there offense level was also Changed, and thats a fact and in recent cases that have been granted proves that Mr. Sadio's appeal does not lack arguable basis in Law or Fact, and does have merit.

REASONS FOR GRANTING THE WRIT

POINT ONE

Did the Second Circuit Court of Appeals wrongly dismiss Mr. Sadio's appeal with out no briefs being filed or hearing Any arguments, Violating Mr. Sadio's due process, when clearly in fact and in Law Mr. Sadio is eligible for the first step, and Should be resentenced for his "Covered offense"

The Petitioner is eligible for relief under the First Step Act "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 2010 (Public Law 111-220, 124 Stat. 2372, that was committed before August 3, 2010

"See First Step Act Title IV, sec 404(a) Allows a court to impose a sentence for Covered offense. The government contends that Mr. Sadio Already benefitted from the Fair Sentencing Act 2010 as the reason why he is not eligible for the first step act, Yes the court at Sentencing only change Mr. Sadio's mandatory minimum from 10 years to life to 5 years to 40 years, but the court errored in not changing Mr. Sadio's offense level. which should be At 24 under the new guidelines for crack Cocaine offenses, where 50 grams of Cocaine base but under 280 grams is at a different offense level that Mr. Sadio was sentenced to. Mr. Sadio is still eligible for a sentence reduction under the first step Act. Not only was Mr. Sadio's crime committed before August 3, 2010, The Fair Sentencing

Act of 2010 shifted Mr. Sadio's exposure from the enhance penalties set for in Section 841(b)(1)(A) to the enhanced penalties in Section 841(b)(2)(B), but it also concluded that he was only exposed to 50 grams or more of cocaine base. Mr. Sadio was found guilty by jury, who made no specific amount of cocaine base, only guilty on his charge, Conspiracy with intent to distribute 50 grams of cocaine base, and possession with intent to distribute 50 grams of cocaine base, see *Apprendi v New Jersey*, 530 US 466 (2000) *Alleyne v United States*, 133 S.Ct. 2151. Mr. Sadio's new guideline range should be 100 to 125 months. The first step Act does not mandate sentence reductions for defendants who are eligible for relief see *United States v Gore*, 371 F.Supp. 3d 524 U.S. Dist LEXIS 35838 (2019). But now in new cases nothing in the language restricts eligibility to defendants who were convicted of a singular violation of a federal criminal statute who penalties were modified by Section 2 or 3 of the Fair Sentencing Act, so long as a defendant was convicted of "a violation" i.e. at least one violation for which penalties were modified by Section 2 or 3 of the Fair Sentencing Act, he or she is eligible for relief. As a multitude of district courts across the country have now recognized [i]t is the statute of conviction, rather than a defendant's conduct, that determines a defendant's eligibility under the first step Act (*Williams*, 2019 U.S. Dist LEXIS 111489, 2019 WL 2865 226 at *2 (S.D.N.Y. July 3, 2019, see also *United States v Harris* 2020 U.S. Dist LEXIS 5132 Jan 12, 2020 (2nd Cir.)

See Also these Case that have been decided,
United States v Powell U.S Dist LEXIS 171895 Oct 3, 2019 (2nd cir)
United States v Luna 2020 U.S. Dist LEXIS 14545 Jan 29, 2020 (2nd cir)
United States v Brown 2020 US Dist LEXIS 11662 Jan 22, 2020 (2nd cir)
United States v Bowman 2020 US Dist LEXIS 15642 Jan 29, 2020 (2nd cir)

What all these case have in common with Petitioner,
is All these people in those cases federal offenses were
committed before August 3, 2010, and was granted the
first step act 404, Section 2 and 3 of the fair Sentencing
Act, and were resentenced for there "Covered offense", but
Petitioner Mr. Sadio was not granted motion, but like all
those case, Mr. Sadio committed his offense for Crack Cocaine
base before August 3, 2010, and is eligible for the first step
Act, 404 Section 2 and 3 of the fair Sentencing Act does
apply and should be resentencing for his "Covered offense"
a whole new sentence and Supervised release term. Remember
the government said I already benefitted from the fair Sentencing
Act, but does that not make me eligible for the first step
Act 404, and my "Covered offense", especially when I am
eligible.

REASONS FOR GRANTING THE WRIT POINT TWO

There is a need for the United States Supreme Court to resolve the Conflict amongst the District and Appellate Court to Provide guidance as to what makes a person eligible for the first STEP Act

Petitioner Mr. Sadio was denied in District Court for the first Step Act, not because I was not eligible, but because the government said I benefitted from the fair Sentencing Act 2010, but this is something different I am arguing for back when I was being Sentence. At Sentencing my mandatory minimum was the only thing change, because of the fair Sentencing Act, now Petitioner contends he is eligible for relief under the First step Act defines a "covered offense", the statutory penalties for which were modified by Section 2 or 3 of the fair Sentencing Act 2010. (Public Law 111-220, 124 Stat. 2372) that was committed before August 3, 2010. see First Step Act, Title IV, Sec. 404(a). and it allows "[a] court that imposed a sentence for a covered offense" to "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 were committed." Id., Section 404(b). Petitioner was indicted December 3, 2009, Petitioner was sentenced January 6, 2012. The appellate Court for the Second Circuit did not even let a brief be filed. Dismissed Appeal saying Lacks an arguable basis either in law or in fact.

Petitioner has shown where in law and in fact where the first step Act applies in a arguable basis. Specifically Section 404 of the first step Act permits a court that impose a Sentence for a covered offense to impose a reduce Sentence as if Section 2 and 3 of Fair Sentencing Act 2010 were in effect at the time the covered offense was committed United States v Lawrence Williams ("L Williams") NO 03-CR-1334, 2019 U.S. Dist Lexis 111489, 2019 WL 2865226 at *2 (S.D.N.Y. July 3, 2019 quoting first step Act § 404) (citing Rose, 379 F. Supp 3d at 228-37) United States v white, NO 99-CR-628-04, 2019 U.S. Dist Lexis 119164, 2019 WL 3228333 at *2 n.1 (S.D. Tex July 17, 2019) collectively forty-one district court cases reaching this conclusion.

The petitioner is more than eligible, and should be granted his Petition For a writ of Certiorari.

REASONS FOR GRANTING THE WRIT

POINT THREE

Whether the Second Circuit Court of Appeals Violated Petitioners Sixth Amendment Constitutional Right to Counsel, by denying legal representation, If Petitioner couldn't afford legal representation one should be provided

Petitioner Mr. Sadio filed a motion and filled out every form given to him from the Second Circuit Court of Appeals for legal Counsel, As a right to due process and Sixth amendment, Petitioner Mr. Sadio has a right to be represented and be afforded legal assistance from the court from the arrest to completion of / exhaustion of Appeals, Pursuant to rule 44 of the Federal rules of Criminal Procedure and the Criminal Justice Act (CJA) 18 U.S.C. § 3006A, Petitioner does not have the education, or the experience in criminal and appellate law to protect and preserve his rights under the United States Constitution. Since Petitioner can't afford legal representation one should be provided. Petitioner is entitled to counsel to aid in the preparation of his appeal(s). In DOHERTY v United States, 404 U.S. 28, it was said that [G]iven the existing apparatus the Second Circuit Court of Appeal for the

purpose of appointing counsel for the improvised appellants. The Petitioner was without counsel and relies on HAINES V KERNER 404 U.S. 519 in hope of being granted counsel. Under the Sixth amendment, the Petitioner should have been given counsel, it was to see little burden.

CONCLUSION

For the foregoing reasons, The Court
Should issue Petitioner a writ of Certiorari.

Dated: September 18, 2020

respectfully Submitted,
O/S

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