

No 20-6819

IN THE
SUPREME COURT OF THE UNITED STATES

FRANTZ STERLIN

— PETITIONER

(Your Name)

VS.

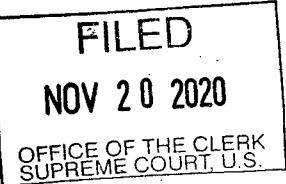
ORIGINAL
ORIGINALE

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE ELEVENTH CIRCUIT COURT OF APPEALS

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



PETITION FOR WRIT OF CERTIORARI

Frantz Sterlin, Reg.# 82385-004

(Your Name)

Federal Correctional Complex,
P.O. Box 1032, Coleman-MED

(Address)

Coleman, Florida 33521-1032

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Whether Petitioner was eligible for a First Step Act reduction of his sentence, based on Section 404 of the Fair Sentencing Act of the First Step Act, under U.S. Senate Bill 756?

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:

TABLE OF AUTHORITIES CITED

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CASES	
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U.S. Senate Bill 756	
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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 "B" 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 is unpublished.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 "A" 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 is unpublished.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 is unpublished.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

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 26, 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).

[] 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

Fifth Amendment for the United States Constitution

Sixth Amendment for the United States Constitution

Eighth Amendment for the United States Constitution

Title 21 U.S.C. § 841(a)(1)

Title 21 U.S.C. § 851(a)(1)

Title 18 U.S.C. § 3553(a); 1-7 Factors

U.S. Senate Bill 756

STATEMENT OF THE CASE

Section 404 of the First Step Act of 2018, which was enacted on December 21, 2018, independently authorizes a district court to impose a reduced sentence for crack cocaine convictions where the statutory penalty provisions of the Fair Sentencing Act would have applied, had that Act been in effect at the time of Petitioner's original sentencing.

Section 404 of the First Step Act authorizes the court to impose a reduced sentence for certain crack cocaine offenses, the statutory penalties for which were modified by the Fair Sentencing Act of 2010.

In Petitioner's case, a Grand Jury indicted him in 2009, in the Southern District of Florida, on a superceding indictment; Count One - conspiracy under Title 21 U.S.C. § 846, and four Counts of possession with intent to distribute cocaine base in violation of 21 U.S.C. § 841(a)(1), Counts Nine through Twelve. Petitioner proceeded to trial on April 26, 2010, during the first trial, the court severed Counts Nine through Twelve, against Petitioner, and proceeded only on Count One. After four days of trial, Petitioner was found not guilty of Count One.

On May 3, 2010, Petitioner proceeded to trial on a second trial involving the severed Counts Nine through Twelve, on May 5, 2010, the jury found him guilty on all four counts of possession with intent to distribute cocaine base. He was

sentenced to 192 months in a federal prison. Petitioner now pursues this writ of certiorari after exhausting all of his remedies for the First Step Act.

REASONS FOR GRANTING THE PETITION

Petitioner understands that the Honorable United States Supreme Court has the discretion, as to whether or not, it wants to accept a writ of certiorari. Petitioner is requesting that this writ be accepted because he feels his Fifth Amendment right to Due Process to receive such a reduction is being denied, and his Sixth Amendment right to the Element Clause of the statute under which he was convicted, because his statute of conviction was amended, and therefore, Petitioner feels that he should not be discriminated against, just because he received a lower sentence under the judge's discretion at sentencing. Petitioner feels that under the above stated two constitutional Amendments of the Fifth and Sixth Amendments, that he is entitled to a sentence reduction under the First Step Act, regardless of the below Level of sentencing he received at his sentencing for proceeding to trial, and receiving a sentence, that the court felt necessary to give. The First Step Act now states that Petitioner is entitled to even another sentence reduction and Petitioner is therefore, requesting it. In the event someone else is subjected to violations of their Fifth and Sixth Amendment rights under the United States Constitution.

Petitioner hopes and prays that this writ be granted, based on the Honorable United States Supreme Court's discretion.

ARGUMENT ONE

Whether Petitioner Was Eligible for a First Step Act Reduction of his Sentence Based on the First Step Act of Section 404 Under United States Senate Bill 756

The Lower Court had discretion to lower the Petitioner's sentence, regardless of his Title 21 U.S.C. § 851 status, and career offender status. Because the First Step Act affected Petitioner's § 851 status, once he was to be resentenced, and his career offender status, based on Title 18 U.S.C. § 3553(a), 1-7 factors. Also, the Lower Court stated that it had discretion to reduce the Petitioner's sentence under the First Step Act, of Section 404, but refused to do so, because Petitioner's co-defendants received lower sentences than he did. Petitioner proceeded to trial. And because he proceeded to trial, he should not receive a First Step Act reduction of his sentence. Because his co-defendants received a lesser sentence than Petitioner, then Petitioner should not receive the benefit of the First Step Act. Even though Petitioner has accomplished educational and vocational progress while being incarcerated. And has not been a problem inmate, and respects all prison staff and inmates alike. Petitioner should have received the benefit of the doubt. And not been denied simply because he proceeded to trial, and because his co-defendants received lesser sentences than he did. That is irrational, unreasonable, and an abuse of discretion in itself to deny Petitioner such a First Step Act reduction of his

sentence. That is also cruel and unusual punishment under the Eighth Amendment, and a Fifth Amendment Due Process of Law under the statute under which Petitioner's sentence was reduced under the First Step Act for which he was eligible, for such a reduction.

The lower court stated that Petitioner's range would have been at 262 to 327 months, compared to the 192 months Petitioner received. However, the lower court does not admit that the Petitioner would also have received five more years off of the 262 month to 327 month sentence, for Section 851, that Petitioner was enhanced for which would have put Petitioner at a lower Level than 262 months of his career offender status. The lower courts simply abused their its discretion in an unconstitutional Fifth, Sixth, and Eighth Amendment perspective. And without any real legal legitimate reasons, other than Petitioner's co-defendants received a lesser sentence. Is Petitioner to be punished for proceeding to trial and because his co-defendants received lesser sentences, because they were afraid to exercise their trial rights. They are to be rewarded for not going to trial, and the Petitioner punished for going to trial in an attempt to prove his innocence under the Fifth and Sixth and Eighth Amendments under the United States Constitution. This is not the American way of justice. No way should be punished nor denied a First Step Act reduction of their sentence, simply because they proceeded to trial to prove their innocence in a court of law, before a jury of twelve. See Jones

v. United States, 962 F.3d at 1297; see Fair Sentencing Act of 2010, pub. L. No. 111-220, 124 stat. 2372 (2010). Petitioner was also eligible for a U.S.S.G. Amendment 782, which would have reduced his sentence even lower than the 192 months he is serving, yet he was denied that reduction as well. Thereby being denied simply because he proceeded to trial in order to prove his innocence in a court of law before a jury of twelve, he is now being punished for it by being denied a First Step Act reduction of his sentence, a 404 Section act of Sections 2 and 3 reduction of his sentence and Section 851, and a Fair Sentencing Act reduction of his sentence under U.S.S.G. Amendment 782, all because he went to trial, and his co-defendants received a lesser sentence than he did, because he chose to go to trial and prove his innocence. That is totally unconstitutional under the Fifth, Sixth, and Eighth Amendments under the United States Constitution. See **Dorsey v. United States**, 567 U.S. 260, 268-70, 132 S. Ct. 23121, 2328-29 (2012); **Gall v. United States**, 552 U.S. 38, 51, 128 S. Ct. 586, 597 (2007); **Koon v. United States**, 518 U.S. 81, 113, 116 S. Ct. 2035, 2053 (1996); and **Pepper v. United States**, 562 U.S. 476 (2011).

The lower courts simply abused of their discretion in denying Petitioner a reduction in his sentence, based on all of the above stated reasons, and Fifth, Sixth, and Eighth Amendment unconstitutional prejudice reasons overall, which is based simply on because Petitioner proceeded to trial and executed his Fifth, and Sixth Amendment rights to a trial by jury.

Petitioner hopes and prays that this Honorable U.S. Supreme Court use its discretion and accept this case and explain to the country that no one should be punished by being denied a First Step Act reduction of their sentence simply because they proceeded to trial to prove their innocence in a court of law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Frank B. Tortor

Date: November 20, 2020

Mail Box Rule: Houston v. Lack, 487 U.S. 266 (1988)
The prison is on total lockdown, we have only one or two hours a day to use phones and showers. No moves to other buildings (Education Dept.) or Mail Office, therefore, we have to use the Unit Mail Box.