

IN THE SUPREME COURT OF THE UNITED STATES

STEVEN JONES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ELIZABETH B. PRELOGAR
Acting Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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In 1994, following a jury trial in the United States District Court for the Southern District of Alabama, petitioner was convicted of conspiring to possess cocaine base (crack cocaine) with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and 846; possessing crack cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1); and traveling in interstate commerce in aid of racketeering, in violation of 18 U.S.C. 1952(a). Judgment 1. At sentencing, the district court determined that petitioner's offense involved at least 75 kilograms of crack cocaine and that the statutory penalty range for his crack-cocaine convictions was ten years to life imprisonment under 21 U.S.C. 841(b)(1)(A)(iii) (1994). Pet. App. 5. The court imposed a life

sentence on each of those counts and a concurrent sentence of 60 months of imprisonment on the racketeering count. Ibid.; see Judgment 2. The court of appeals affirmed, 105 F.3d 671, and this Court denied a petition for a writ of certiorari, 520 U.S. 1132.

In 2019, petitioner filed a motion for a reduction of his sentence under Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222. Pet. App. 5. A defendant is eligible for a sentence reduction under that provision only if the defendant has a "covered offense," which the First Step Act defines 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 (Public Law 111-220; 123 Stat. 2372), that was committed before August 3, 2010." § 404(a), 132 Stat. 5222. The district court denied petitioner's motion, concluding that he was ineligible for relief because his pre-Fair Sentencing Act violation of Section 841(a)(1) had involved 75 kilograms of crack cocaine -- an amount sufficient to trigger the same statutory penalty range of ten years to life imprisonment even after the enactment of the Fair Sentencing Act. D. Ct. Doc. 437, at 1-3 (Apr. 9, 2019).

The court of appeals affirmed. Pet. App. 1-34. The court determined that petitioner has a "covered offense" because Section 2 of the Fair Sentencing Act modified the statutory penalties for a violation of Section 841(a)(1) and (b)(1)(A)(iii). See Pet. App. 15-28. The court further determined, however, that the

district court did not err in denying petitioner's sentence-reduction motion, in light of the judicial drug-quantity finding when the sentence was imposed and the arguments petitioner had made about that finding. Id. at 30.

Petitioner contends (Pet. 16-26) that the court of appeals erred in construing the definition of "covered offense" in Section 404 of the First Step Act and that the court's approach conflicts with decisions of other courts of appeals. This Court has granted review in Terry v. United States, No. 20-5904 (Jan. 8, 2021), to address the First Step Act's definition of "covered offense." In Terry, which also arises from the Eleventh Circuit, a panel of the court of appeals applied the court's earlier decision in this case to conclude that a pre-Fair Sentencing Act violation of Section 841(a) (1) and (b) (1) (C) involving crack cocaine is not a "covered offense." See Pet. App. at 1a-5a, Terry, supra (No. 20-5904). Although this case does not involve precisely the same question, the Court's resolution of Terry could conceivably bear on petitioner's eligibility for a sentence reduction and the permissible extent of any such reduction. And even if it does not, the Court could appropriately grant the petition, vacate the judgment below, and remand for further consideration in light of the government's position regarding the salience of previous judicial drug-quantity findings in Section 404 proceedings. See, e.g., Gov't Br. at 16 n.*, Terry, supra (No. 20-5904). The

petition for a writ of certiorari should therefore be held pending the Court's decision in Terry and then disposed of as appropriate.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General

APRIL 2021