

No. 20-7068

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Jerry Davis, Jr. — PETITIONER
(Your Name)

vs.

United States of Amer. RESPONDENT(S)

FILED
JAN 25 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

US Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jerry Davis, Jr #27533-112
(Your Name)

F.C.I Victorville #1 P.O. Box 3725
(Address)

Adelanto, CA 92301
(City, State, Zip Code)

(Phone Number)

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QUESTION(S) PRESENTED

Whether the 4th Circuit Court of Appeals created a circuit split by affirming the District Courts reason to deny his motion for a sentence reduction under the First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194, 5222

Whether Petitioner's (DAVIS) conviction for conspiracy to possess with intent to distribute powder Cocaine constitutes a "Covered Offense" that makes him eligible for relief under the First Step Act when he was indicted also for Crack the same Count 1 in which he pled guilty.

Whether a defendant under binding circuit precedent U.S. v. Gravatt, 953 F.3d 258 (CA4-2020)- Mixed Crack and Powder Cocaine Conspiracies constitute "Covered offenses" within the meaning of the 2018 First Step Act, rendering a defendant legally eligible for a discretionary sentence reduction.

Whether Petitioner (DAVIS) guilty plea to Count 1 of the operative indictment, which charged a "dual-object Conspiracy" whereby Davis knowingly and willfully conspired with others to unlawfully possess with intent to distribute 50 grams or more of crack cocaine and 5 Kilograms or more of powder... Does DAVIS and others similarly charged qualify equally for the Fair Sentenceing Act.

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:

RELATED CASES

United States v. Gravatt, 953 F.3d 258
(CA4 2020)

No related cases involved, just the above case that is in conflict.

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STATUTES AND RULES

First Step Act of 2018, Pub. L. 115-391,
132 Stat. 5194, 5222: Listed in Questions
Presented.

OTHER

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 A to the petition and is

reported at Order denying October 30, 2020; 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 October 30, 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 _____.
The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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

The First Step Act of 2018, Pub. L.
115-391, 132 Stat. 5194, 5222

Statement of the Issue

1. Whether a Circuit split exists in light of United States v. Gravatt, where Davis conviction for Conspiracy, under Count 1 of the indictment, to possess with intent to distribute powder cocaine constitute a "Covered Offense" that makes him eligible for relief under the First Step Act?

Statement of the Case

I. Whether the United States Court of Appeals for the Fourth Circuit created a circuit split by affirming the United States District Court's order denying Davis's motion for a reduction in sentence under the First Step Act in opposite of United States V. Gravatt, 953 F.3d 258 (CA4 2020).

Section 404 of the First Step Act authorizes retroactive application of §§ 2 and 3 of the Fair Sentencing Act only when a defendant's statutory penalties would have been different in the Fair Sentencing Act had been in effect when his sentence was imposed. In United States V. Gravatt, 953 F.3d 258 (CA4 2020), this Court made clear that the offense of conviction determines whether the defendant was convicted of a "Covered offense," i.e. a violation of a Federal Criminal Statute, the statutory penalties for which were modified by sections 2 or 3 of the Fair Sentencing Act of 2010. "Id. at 263

Under binding Circuit precedent - U.S. V. Gravatt - Mixed crack and powder cocaine conspiracies constitute "Covered offenses" within the meaning of the 2018 First Step Act, rendering a defendant legally eligible for a discretionary sentence reduction. The government's core bid for escape Gravatt's controlling - force - Stressing that Davis never formally allocuted to the instant conspiracy's crack object - in fact, the government fails to recognize that Davis plead guilty to the entire reading of Count 1 of the indictment which includes the 50 grams or more of crack cocaine.

TThe Court: "[H]e is indicted also for crack.
Is that involved?"

PROSECUTOR: "It may be involved but we are just going with the cocaine at this point, Your Honor."

TThe Court: "All right."

Later /subsequently, TThe Court: asked Davis 'Do you understand what you are charged with in Count 1 of the indictment?

DAVIS answered: "Yes, Sir."

DAVIS was indicted for Conspiracy to possess with intent to distribute and to distribute five Kilograms or more of cocaine and 50 grams or more of cocaine base (commonly known as "Crack" cocaine), a violation of 21 U.S.C. §§ 846, 841(A)(1), and 841(b)(1)(A) (Count one).

During the colloquy, the Court specifically addressed to DAVIS.

TThe Court: Did you as charged in Count 1 of the indictment during this period of time as alleged in the indictment enter into this unlawful Conspiracy to Possess

With intent to distribute and to distribute five Kilograms or more of Cocaine as set forth in Count 1 of the indictment?

DAVIS: Yes, Sir.

Whether the government published facts which included no reference to crack cocaine, the bottom line is that crack cocaine was listed in the indictment under Count 1 and there is no record in the plea agreement or colloquy with the court that the government would dismiss that portion of Count 1 of the indictment. Therefore it makes no difference that DAVIS, as the district court pointed out (AII2), never formally allocuted to the conspiracy's crack object. After all, the focus of a defendant's allocution in a dual-object crack/powder cocaine conspiracy is often an expedient fortuity, as either substance may suffice for plea purposes. DAVIS's case is a prime example.

Better yet, merely charging a conspiracy that includes crack cocaine with its hitherto excessive and disproportionate penalties, can and often does induce a guilty plea to powder cocaine or other lesser offenses - whether or not the defendant formally admits or ultimately allocutes to the crack crime, the record shows that the government failed to remove the crack crime from the indictment in Count 1 and DAVIS plead guilty specifically to Count 1 of the indictment as it reads.

Furthermore, in *United States v. Johnson*, 961 F.3d 181, 187 (CA2 2020) the Second Circuit joined at least six of its sisters—including the Fourth Circuit—in holding that the statute under which a defendant's was convicted, not the defendant's actual conduct, ... determines whether a defendant was sentenced for a "covered offense" under the First Step Act. "In other words, it is a defendant's statutory offense, not his or her 'actual' conduct, that determines whether he has been sentenced for a "covered offense," and "consequently" qualifies for discretionary FSA relief.

The Fourth Circuit decision to affirm for the reasons stated by the district court, clearly conflicts with Fourth Circuit precedent in *U.S. v. Gravatt*.

REASONS FOR GRANTING THE PETITION

A compelling reason exist were a United States Court of appeals for the Fourth Circuit has entered a decision in conflict with the decision of another United States court of appeal in the same Fourth Circuit on the same important matter.

CONCLUSION

Premised on the fact that the Fourth Circuit's decision conflicts with another Fourth Circuit decision, the petitioner respectfully moves this Honorable Court to Grant his application, Vacate the Fourth Circuits decision and Remand for further consideration.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jerry Daz

Date: Jan 21, 2021