

20-7887
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RONNIE SPELLS

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED
APR 01 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RONNIE SPELLS

(Your Name)

P.O. BOX 6000

(Address)

FLORENCE, COLORADO 81226

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Whether District Court Judge Castel and the Second Circuit Appeals Court perpetuated continued systemic racism by contending that Congress left out the factors that a court should consider in exercising its discretion to reduce a black defendant's sentence under Section 404 of the First Step Act when Congress purpose of the statue obviously did not intend to set forth any additional or so-called factors the Second Circuit believed was left out and therefore, the district court was correct to assemble its own factors that minimized the unwarranted disparity in mandatory minimum triggering quantities for crack cocaine offenders?

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

1. United States v. Terry, U.S. Court of Appeals for the Eleventh Circuit, No. 20-10482, 2020 U.S. App. LEXIS 30250, September 22, 2020

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>United States v. Johnson</u> , 961 F.3d 181 (2d Cir. 2020)	6
<u>United States v. Terry</u> , 2020 U.S. App. LEXIS 30250 (11th Cir.)	6
<u>Terry v. United States</u> , U.S. Supreme Court No. 20-5904 (2020)	6, 7
<u>Dorsey v. United States</u> , 567 U.S. 260, 273 (2012)	6

STATUTES AND RULES

18 U.S.C. §3582(c)(2)	6
18 U.S.C. §3553(a)	7
21 U.S.C. §841(b)(1)(B)	6
Pub. L. No. 115-391	6
Pub. L. No. 111-220	6

OTHER

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	10

INDEX TO APPENDICES

APPENDIX A	- The Opinion of the United States Court of Appeals for the Second Circuit (November 6, 2020)
APPENDIX B	- The Opinion of the United states District Court for the Southern District of New York (September 27, 2019)
APPENDIX C	- Order of the United States Court of Appeals for the Eleventh Circuit denying the Appeal of Appellant Tarahrick Terry in 2020 U.S. App. LEXIS 30250 (No. 20-10482) (Sept. 22, 2020)
APPENDIX D	- Relevant Statutory Provisions §404 of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194
APPENDIX E	
APPENDIX F	

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 833 Fed. Appx. 890 (Nov. 6, 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 B 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 November 6, 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 November 6, 2020 (date) on April 5, 2021 (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

18 U.S.C. §3582(c)(2)

21 U.S.C. §841(a)(1)

21 U.S.C. §841(b)(1)(B)(iii)

Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372

First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (Section 404)

18 U.S.C. §3553(a)

U.S. Constitution Amendment V. "No person shall be deprived of life, limb or liberty without the due process of law."

STATEMENT OF THE CASE

The Petitioner, a black man, who was 27 years old when he was sentenced to approximately 21 years in federal prison, which was subsequently reduced in 2008, to approximately 18 years, for possessing, inter alia, "crack cocaine" and guns. His Crack conviction had a mandatory minimum sentence. On August 3, 2010, President Obama signed into law the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372. In 2018, Congress passed the First Step Act, allowing African American Defendants who were convicted and sentenced for "crack offenses" before 2010 to apply for a sentence reduction. Pursuant to this new law, this petitioner's crack conviction no longer carried any mandatory minimum sentence. Therefore, this petitioner applied for a modest 29-month reduction in his federal crack cocaine sentence. The district court denied it, despite the petitioner being exactly the type of person, with the exact type of crime, committed in an specific/relevant time period that Congress intended to benefit from the change in the crack cocaine law. Like many black youths, the petitioner had a troubled and negligent upbringing. He was born to a teenage mother, who was only 14 years old at his birth and both his parents abused drugs and alcohol. At 9 years old, the petitioner's father went to prison who was still serving his prison sentence when the petitioner was sentenced for crack cocaine. When the petitioner was just 12 years old his mother was convicted of selling drugs and sent to prison. With both parents incarcerated while the petitioner was a teenager, he was introduced to drug dealing by older men on the streets in his neighborhood. The petitioner had a poor school attendance record because he was also ashamed of the fact that he had a learning disability and other kids bullied him for being in special education classes. At the time of sentencing in this case, the petitioner's IQ score placed him woefully in deficient ranges. The petitioner is now age 41.

On September 27, 2019, the district court held that the petitioner was absolutely eligible for a sentence reduction under the changes in the crack cocaine law, specifically the First Step Act, but however, the district court had discretion to decline to do so. P. Kevin Castel was the district court judge who declined to exercise his "discretion to reduce this petitioner's sentence." Judge Castel noted that "The First Step Act does not set forth the factors that a court should consider in exercising its discretion to reduce a sentence." However, Judge Castel claimed he would take into account "the purpose of the statute, to reduce unwarranted disparity in mandatory minimum triggering quantities for crack cocaine and the facts as they existed at the time of the First Step Act Motion," including "post sentencing evidence of disciplinary history and

STATEMENT OF THE CASE CONTINUED

steps towards rehabilitation." The petitioner is a black man incarcerated in America's Federal Prison System over 15 years for a crack cocaine conviction at time when racial disparities in crack cocaine sentencing was undisputedly pervasive for black defendants. The petitioner appealed Judge Castel's denial of Section 404 relief to the Second Circuit Court of Appeals on whether the district court should have granted this petitioner request for a modest 29-month reduction in his crack cocaine sentence pursuant to Section 404 of the First Step Act?

REASONS FOR GRANTING THE PETITION

Certiorari should be granted in this case because the district court and the Court of Appeals looked beyond this petitioner's statue of conviction in order to supercede Congress' purpose of Section 404 under the First Step Act of 2018, Pub. L. No.115-391, for 18 U.S.C. §3582(c)(2) applications for sentence reductions. Certiorari should be granted in this case because Section 404 of the First Step Act of 2018 was enacted by Congress to extend the availability of sentence reductions authorized by Section 2 of the Fair Sentencing Act, Pub. L. No. 111-220 to certain defendants but namely disproportionately sentenced black defendants like the petitioner Ronnie Spells. Congress made it crystal clear that in order to obtain the benefit of Section 404(b), a defendant MUST have been imprisoned with respect to a "covered offense." Section 404(a). A covered offense is one based upon a violation of a federal criminal statue committed before August 3, 2010, the statutory penalty for which was modified by Section 2 of the Fair Sentencing Act.

The petitioner Ronnie Spells should have been the beneficiary of a sentence reduction based on the purpose and intent of the language of Congress when modifying the statutory penalties for crack cocaine offenses, like the one for which the petitioner Spells was sentenced, that was subject to 21 U.S.C. §841(b)(1)(B)'s mandatory sentencing range. See 124 Stat. and United States v. Johnson, 961 F.3d 181 (2d Cir. 2020). At first, the Fair Sentencing Act's reforms did not apply retroactively to defendants like petitioner Spells who had been sentenced prior to its passage. Dorsey v. United States, 567 U.S. 260, 273, 132 S. Ct. 2321, 183 L.Ed 2d 250 (2012). With the signing of the First Step Act into law by President Trump on december 21, 2018, which made certain provisions retroactive. In particular, Section 404 of the First Step Act provides that, if a defendant was originally sentenced for a "covered offense" as defined by the Act, a district court may . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing

Act of 2010 . . . were in effect at the time the covered offense was committed." First Step Act. §404(b), 132 Stat. at 5222.

What's strikingly odd in Section 404 that affected the outcome in this case as well as Terry v. United States, U.S. Supreme Court No. 20-5904 (currently before this court) provides that "nothing in Section 404 shall be construed to require a court to reduce any sentence pursuant to Section 404." Id. §404(c), 132 Stat. at 5222. The district Court in this petitioner's case concluded that he was eligible for Section 404 relief, but exercised its discretion to deny the motion. See Appendix B. The District court attempted to reason that it was "obligated to consider the facts as they existed at the time its decision on the Section 404 motion, rather than as they existed at the time of original sentencing, and therefore considered this petitioner's post-sentencing conduct." Id.

According to the District court and the Second Circuit Court of Appeals, Section 404 relief is "discretionary" under Section 404(c) of the First Step Act and retains the discretion to decide what factors are relevant as it determines whether and to what extent to reduce a sentence.

The reason that the court should grant Certiorari in this case is to see into a case like that of this petitioner and Petitioner Terry, whereas it is abundantly clear that the lower courts are fashioning a criteria out of Section 404(c) language in order to obviously "create what factors" it believes Congress omitted and to perpetuate systemic racism from the bottle-neck legislation created in the First Step Act that set forth factors that a court should consider in exercising its discretion, based on "the purpose of the statute and the reasons why the sentence was imposed in the first place and the sentencing factors set forth at 18 U.S.C. §3553(a). Instead, the very same type and class of defendants whose Congress intention was to give a chance to thousands of people who are still serving sentences for offenses involving crack cocaine under the old 100-to-1 ruling to petition individually . . . to the court for a

reduction in the sentencing." Congress has decided what eligibility was based and now that process has been greatly questioned by the judicial branch that is alleging Congress left out language which set forth factors surrounding courts discretion or otherwise would have been "irrational" for Congress to have omitted such factors. It is contrary to Congress' intent for the court to idealize a criteria that is non-existent because it only re-victimizes those defendants who were subject to racially disproportionate sentences in the first place, to a non-existent eligibility requirement that is not contained in any provision of the First Step Act. For these reasons the court should grant certiorari.

Congress designed Section 404 of the First Step Act to be wise, sound, and reasonable legislation. But the district court and the Second Circuit feel as though a remedy to the situation as shaped by Congress is irrational, unreasonable and illogical as long as there is no language providing the courts with explicit factors beyond those provided in the statute, such as reliance on "offense conduct" and "post sentence developments" not mentioned in the First Step Act to govern eligibility for a sentence reduction. For instance, District Court Judge Castel stated in his order of denial, "because consideration of a reduction occurs long after the original sentence, a court should consider the facts "as they exist at the time it exercises sentence reduction discretion" which he invasions post sentencing evidence (e.g. disciplinary record and rehabilitation efforts) are factors and steps a district court should be allowed to consider. See Appendix B, at 5-6.

Congress did not include any language suggested by Judge Castel and is what prompted his opinion that something is irrational or unreasonable about the First Step Act passage of Section 404, but eludes to the language in Section 404(c) that states, "nothing in Section 404 shall be construed to require a court to reduce any sentence pursuant to Section 404." Id.

Another reason why the court should grant certiorari review is because we cannot have an American Sentencing System in which an individual judge's purported disagree-

ment with the [guidelines] that in one courtroom we can have sentencing that looks like Finland, while in a different courtroom we have sentencing that looks like Mississippi.

Section 404(b) of the First Step Act allows a court that "imposed a sentence for a covered offense" to "impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 was in effect at the time the covered offense was committed." The "purpose" of the Fair Sentencing Act was to restore fairness to federal cocaine sentencing, to those defendants like Petitioner Spells, who had already been sentenced harshly before the passage of the Act. To be more precise, the Act defines a "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 of 2010, that was committed before August 3, 2010."

Again, the petitioner Ronnie Spells is a black man who was sentenced for a crack conviction at a time when racial disparities in crack cocaine sentencing were pervasive. Since that sentencing, in 2018, Congress recognized that, defendant's like petitioner Spells, convicted of crack offenses and had been subjected to unfairly high sentences because of the old ratio between sentences for crack cocaine and powder cocaine, passed the First Step Act, Section 404, to reduce his sentence and to decrease these disparities by restoring racial fairness in sentencing.

A final reason why the court should grant certiorari relief in this case is because Congress passed the First Step Act, Section 404, which conveyed a message to the public and already sentenced, disproportioned african american defendants like petitioner who have been crushed by the previous penalty structure for crack cocaine offenses. It is individual Judges who disagree with the intent and purpose behind Section 404 and refuse to take into account those reasons for sentence reduction, despite the fact that those reasons are to correct racially disparate sentences from the past, Judge Castel and the Second Circuit seems to visualize judicial dominance by causing these defendants to re-subjected to systemic racism that is clearly contrary to Congress' intent.