

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

JOHN RILEY,
ALSO KNOWN AS P.J.
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 19-60941

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the district court erred by denying the Motion for Sentence Reduction under The First Step Act of 2018.

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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I. OPINIONS BELOW

On July 23, 2008, the Grand Jury for the Southern District of Mississippi returned an Indictment charging Mr. Riley Count I possessing with the intent to distribute more than 5 grams of a Schedule II (a) controlled substance and Counts II and III aiding and abetting others to possess with intent to distribute more than 5 grams of a controlled substance, all in violation of 21 U.S.C. § 841(a)(1). The district court case number is 1:08cr92-LG-RHW. Mr. Riley accepted responsibility for his actions by pleading guilty to Count I of the Indictment.

The district court sentenced Mr. Riley to serve 324 months in prison. The court entered a Final Judgment on May 13, 2009.

Mr. Riley subsequently filed a motion to reduce sentence which was denied on July 13, 2010. Following this denial, Mr. Riley filed a motion to vacate, which the court denied on June 13, 2011. Mr. Riley appealed the denial of the motion to vacate to The United States Court of Appeals for the Fifth Circuit on June 20, 2011. The Court of Appeals denied Mr. Riley a certificate of appealability. On January 3, 2012, the district court then granted Mr. Riley a sentence reduction from 324 months to 262 months. Mr. Riley sought to appeal the order but was denied due to untimeliness. The defendant appealed the denial and the Court of Appeals dismissed the appeal.

On February 2, 2016, the district court, upon the motion of the court, granted Mr. Riley a sentence reduction from 262 months to 210 months. Mr. Riley then filed a motion for a modification or reduction of sentence under the FSA on February 25, 2019. The district court denied the motion on December 13, 2019. The district court's Final Judgment is attached hereto as Appendix 1.

Mr. Riley filed a timely Notice of Appeal to the United States Court of Appeals for the Fifth Circuit on April 24, 2020. The Fifth Circuit case number is 19-60941. The Fifth Circuit remanded the case to the district court for limited purposes on September 8, 2020. The Fifth Circuit's Opinion and Judgment are attached hereto as composite Appendix 2. The district court then entered an order in accordance with the order of the Fifth Circuit on September 9, 2020. The District Court's Opinion and Judgment are attached hereto as composite Appendix 3. The Fifth Circuit then affirmed the district court's rulings via an Opinion filed on December 8, 2020. The Fifth Circuit filed a Judgment on the same day. The Fifth Circuit's Opinion and Judgment are attached hereto as composite Appendix 4. The Fifth Circuit's Opinion is not published, but it appears in the Westlaw electronic database at 831 Fed.Appx 122. A copy of the Westlaw rendition of the opinion is attached hereto as Appendix 5.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on December 8, 2020. This Petition for Writ of Certiorari is filed within 150 days after entry of the Fifth Circuit's Judgment, as required by Rule 13.1 of the Supreme Court Rules, which was amended by this Court's COVID-19 related Order dated March 19, 2020. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. STATUTE INVOLVED

The First Step Act's provision at issue is section 404. This provision states:

- (a) **Definition of covered offense.** In this section, the term "covered offense" means 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; 124 Stat. 2372), that was committed before August 3, 2010.
- (b) **Defendants previously sentenced.** A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 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 was committed.
- (c) **Limitations.** No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

First Step Act of 2018, 115 P.L. 391.

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a criminal conviction entered against Mr. Riley for possessing more than 5 grams of a Schedule II (a) controlled substance with the intent to distribute in violation of 21 U.S.C. § 841(a)(1). The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charge levied against Mr. Riley arose from the laws of the United States of America.

B. Statement of material facts.

This case involves sentence reduction under the First Step Act. The facts relevant to the case are described above in full in the section Opinions Below.

Mr. Riley filed a motion for a modification or reduction of sentence under the First Step Act. The district court then denied the motion and an appeal followed. The Court of Appeals ordered for the case to be remanded for the limited purpose of allowing the district court to explain its reason for the denial of Mr. Riley's motion. The next day, the district court then entered an order further explaining denial. Mr. Riley then submitted a request for supplemental briefing, which was promptly denied. Subsequently, the Court of Appeals affirmed the denial of the motion to reduce or modify sentence.

V. ARGUMENT

A. Review on certiorari should be granted in this case.

Rule 10 of the Supreme Court Rules states, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion.” This case presents a sentencing issue that the Court should exercise its discretion to review. The district court refused to reduce Mr. Riley’s 210 month sentence in accordance with the FSA. Certiorari should be granted to correct this error.

B. The below courts erred by denying the motion to modify or reduce sentence.

First, Mr. Riley has a covered offense as defined by the FSA. He accepted responsibility for his actions by pleading guilty to possession of more than 5 grams of a controlled substance with intent to distribute on October 6, 2008. The court conducted a sentencing hearing on May 13, 2009. Mr. Riley was sentenced to 324 months in prison, followed by five years of supervised release, and a \$7,500 fine. He meets all the requirements of 404(a).

Next, the FSA allowed for Mr. Riley to have a sentence as if the Fair Sentencing Act was retroactive. The Fair Sentencing Act of 2010 subsequently changed the amount prohibited from 5 grams or more but less than 50 grams to 28 grams or more but less than 280 grams for the statutory punishment range of 5 to 40 years.

At issue is whether the district court erred by denying Mr. Riley's February 2019 motion to modify or reduce his sentence based on the First Step Act of 2018. Mr. Riley's original sentence was to 324 months in prison, followed by five years of supervised release, and a \$7,500 fine. This sentence was imposed upon him after an objection by counsel of the calculations within the presentence investigation report, ("PSR"). In particular, the PSR holds the defendant accountable for more than 4.5 kilograms of a cocaine base substance for calculation purposes based on "multiple sources". This lead to Mr. Riley's base offense level being increased from 32 to 38. This, in turn, increased his recommended sentence under the Guidelines.

Nevertheless, relevant facts on appeal are limited to whether Mr. Riley has a covered offense and is entitled to a sentence reduction as defined by the FSA. On February 2, 2016, the district court, upon the motion of the court, granted Mr. Riley a sentence reduction from 262 months to 210 months. This reduction was before the FSA was enacted. Therefore, even though Mr. Riley's sentence has been previously reduced, his current sentence should be reduced as well.

VI. CONCLUSION

Based on the arguments presented above, Mr. Riley asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted May 6, 2021 by:



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CERTIFICATE OF SERVICE

I, Michael L. Scott, appointed under the Criminal Justice Act, certify that today, May 6, 2021, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No. 773649250355, addressed to:

The Honorable Elizabeth Prelogar
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.



Michael L. Scott
Assistant Federal Public Defender