

APPENDIX "A"

Seventh Circuit Appeals Court Order, 3 pages

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 7, 2020*
Decided December 8, 2020

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 20-1749

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

COREY L. JOHNSON,
Defendant-Appellant.

Appeal from the United States District
Court for the Central District of Illinois.

No. 1:07-cr-10044

Joe Billy McDade,
Judge.

ORDER

More than a decade after he was convicted of conspiring to distribute powder cocaine and cocaine base (crack), Corey Johnson sought to reduce his life sentence under the First Step Act of 2018. The district court concluded that it lacked discretion to alter a powder-cocaine sentence such as Johnson's and denied his request. We affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

In 2008, Johnson was convicted by a jury of conspiracy to distribute more than 5 kilograms of powder cocaine and more than 50 grams of crack cocaine. *See 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A).* The court sentenced him to life in prison, the statutory minimum at the time given his two prior drug convictions. *See 21 U.S.C. §§ 841(b)(1)(A)(ii) (powder cocaine) and 841(b)(1)(A)(iii) (crack cocaine).*

In 2020, Johnson moved to reduce his prison term under the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194, 5222. Section 404 of the act made retroactive certain provisions of the Fair Sentencing Act of 2010; Pub. L. No. 111-220, 124 Stat. 2372 (2010), for defendants convicted of a “covered offense,” defined as an offense whose statutory penalties were modified by the Fair Sentencing Act. His crack-cocaine conviction under § 841(b)(1)(A)(iii) was a covered offense, Johnson argued, and so the district court had discretion to apply the Fair Sentencing Act retroactively to reduce his prison term. (The Fair Sentencing Act raised the quantities of crack cocaine necessary to trigger the statutory minimum penalties of § 841(b)(1)(A)(iii) from 50 grams to 280 grams. *Id.*)

The district court denied Johnson’s motion. His powder-cocaine conviction rendered his life sentence mandatory, the court explained, and the First Step Act gives courts no discretion to disregard statutory requirements for such convictions. Thus, the court could not alter his life sentence “regardless of whether his conviction was technically a covered offense.”

On appeal, Johnson maintains that his crack-cocaine violation was a “covered offense” under the First Step Act and made him eligible for resentencing. Johnson, arguing that that he was convicted for a covered and a non-covered offense, analogizes his circumstances to the defendant’s in *United States v. Hudson*, 967 F.3d 605, 610 (7th Cir. 2020), in which we recognized the district court’s discretion to reduce an aggregate sentence that included both covered and non-covered offenses.

But regardless of whether Johnson’s conviction was for a covered offense, the district court lacked discretion to reduce his prison term. As the court explained, Johnson faced a mandatory life sentence for his conspiracy conviction for powder cocaine under § 841(b)(1)(A)(ii)—a statutory provision that the Fair Sentencing Act left untouched. *See Fair Sentencing Act of 2010, §§ 2, 3.* Nothing in the First Step Act allows the court to disregard statutory minimum sentences for powder cocaine offenses. *See United States v. Gravatt*, 953 F.3d 258, 264 n.5 (4th Cir. 2020). And *Hudson* is distinguishable because the defendant’s sentence there was above the statutory

minimum for his non-covered offense, *see* 967 F.3d at 608, while Johnson's life sentence was mandatory for his powder-cocaine conviction.

We have considered Johnson's other arguments, and they are without merit.

AFFIRMED

APPENDIX "B"

United States District Court, Central District of
Illinois, Order. 3 pages

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. 1:07-cr-10044
)
COREY L. JOHNSON,)
)
Defendant.)

ORDER

Before the Court are Defendant Corey L. Johnson's Motion to Reduce Sentence

– First Step Act Amendment (dkt. 130) and the Federal Defender's Motion to Withdraw as Attorney (dkt. 132). The Federal Defender seeks to withdraw as counsel with respect to Defendant's Motion because the Federal Defender has determined the Motion is meritless. The Court agrees. For the following reasons, the Federal Defender's Motion (dkt. 132) is granted, and Defendant's Motion (dkt 130) is denied.

In April 2008, a jury found Defendant guilty of one count of conspiring to distribute 50 grams of cocaine base (crack cocaine) and 5 kilograms of powder cocaine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A). (Dkts. 48, 56; Minute Entry dated April 2, 2008). By operation of the then-effective language in § 841(b)(1)(A)(ii)(II), Defendant was mandatorily sentenced to life in prison. (Dkt. 74). Defendant now seeks relief under the First Step Act of 2018, arguing he was convicted of a covered offense and is therefore eligible for a sentence reduction. (Dkt. 130).

The Fair Sentencing Act of 2010 amended 21 U.S.C. § 841(b)(1)(A) and (B) to increase the crack cocaine quantity thresholds that trigger the statutory mandatory minimum in subparagraph (A) from 50 grams to 280 grams and in subparagraph (B) from 5 grams to 28 grams. Section 404(b) of the First Step Act states: “A court that imposed a sentence for a covered offense may, on motion of the defendant . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time of the offense of conviction was committed.” Section 404(a) defines the term “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.”

Had Defendant only been convicted of conspiracy to distribute 50 grams of crack cocaine, his request might be meritorious. However, Defendant’s life sentence was rendered mandatory by his conviction for conspiracy to distribute 5 kilograms of powder cocaine. The quantity thresholds that trigger the statutory mandatory minimum sentences for powder cocaine were not amended by either Section 2 or 3 of the Fair Sentencing Act. And because the statutory provision mandating Defendant’s life sentence was not amended by either Section 2 or 3 of the Fair Sentencing Act, he is not entitled to relief under the First Step Act regardless of whether his conviction was technically a covered offense. *See United States v. Gravatt*, 953 F.3d 258, 263–64 (4th Cir. 2020) (finding one count of possession with intent to distribute 50 grams of crack cocaine and 5 kilograms of powder cocaine was a covered offense but the defendant was nevertheless ineligible for relief under the First Step Act because the provisions respecting powder cocaine were not altered by section 2 or 3 of the Fair

Sentencing Act); *United States v. Mockabee*, No. 110-CR-00003, 2020 WL 419349, at *4 (S.D. Ind. Jan. 27, 2020) (same). The Court simply has no discretion under the First Step Act to reduce a mandatory sentence imposed for an offense involving powder cocaine.

IT IS THEREFORE ORDERED that the Federal Defender's Motion to Withdraw as Attorney (dkt. 132) is GRANTED and Defendant's Motion to Reduce Sentence – First Step Act Amendment (dkt. 130) is DENIED.

SO ORDERED.

Entered this 20th day of April 2020.

s/ Joe B. McDade
JOE BILLY McDADE
United States Senior District Judge

APPENDIX "C"

Seventh Circuit Appeals Court, Rehearing and
Petition for Rehearing En banc, Order. 1 page

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United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

January 6, 2021

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 20-1749

UNITED STATES OF AMERICA,
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Appeal from the United States
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No. 1:07-cr-10044
Joe Billy McDade, *Judge.*

Order

Defendant-Appellant filed a petition for rehearing and rehearing en banc on December 22, 2020. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.