No. _____

In the

Supreme Court of the United States

_____

Michael Lawrence Williams,

Petitioner,

v.

United States of America,

Respondent.

_____

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

I. Whether a district court's denial of a motion for relief from under Section 404 of the First Step Act is subject to substantive reasonableness review?

PARTIES TO THE PROCEEDING

Petitioner is Michael Lawrence Williams, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael Lawrence Williams seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is located within the Federal Appendix at *United States v. Michael Lawrence Williams*, 832 F. App'x 924 (5th Cir. Jan. 1, 2021) (unpublished). It is reprinted in Appendix A to this Petition. The district court's order denying relief is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on January 11, 2021. On March 19, 2020, the Court extended the 90-day deadline to file a petition for certiorari to 150 days.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND RULES PROVISIONS

This Petition involves Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, § 404, 132 Stat. 5194–249 (2018), which provides:

> Sec. 404. APPLICATION OF THE FAIR SENTENCING ACT.
>
> (a) DEFINITION OF A 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.

LIST OF PROCEEDINGS BELOW

1. *United States v. Michael Lawrence Williams,* 832 F. App'x 924 (5th Cir. Jan. 11, 2021), CA No. 20-10693, Court of Appeals for the Fifth Circuit. Judgment affirmed on January 11, 2021. (Appendix A).

2. *United States v. Michael Lawrence Williams*, 5:06-CR-30-C-BQ, United States District Court for the Northern District of Texas. Order denying relief under the First Step Act, entered June 29, 2020. (Appendix B).

STATEMENT OF THE CASE

Mr. Williams's Original Conviction and Sentencing

In 2006, Appellant Michael Lawrence Williams pled guilty to one count of an indictment that charged him with, *inter alia*, possession with intent to distribute cocaine base and aiding and abetting, a violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(iii) and 18 U.S.C. § 2, while stipulating that the offense involved at least 50 grams but less than 150 grams of cocaine base. (ROA.250–51); *see also* (ROA.30) (Count One of the indictment).

Before sentencing, the United States Probation Office prepared a presentence report ("PSR") concerning Mr. Williams, (ROA. 262–82), using the 2005 edition of the United States Sentencing Guidelines and its amendments through March 27, 2006. (ROA.269).

In tabulating Mr. Williams's offense level, the PSR held Mr. Williams accountable for 183.23 grams of cocaine base, which resulted in a base offense level of 34. (ROA.269) (citing USSG § 2D1.1(c)(3) (2005)). After adjustments, Mr.

Williams's total offense level was 33. (ROA.269). That offense level combined with Mr. Williams's CHC of VI to yield a guideline imprisonment range of 235 to 293 months. (ROA.278). At the time, Mr. Williams's statute of conviction resulted in a mandatory ten-year term of imprisonment under 21 U.S.C. § 841(a)(1) and (b)(1)(A). (ROA.278). The PSR listed no specific reason warranting any sentencing departure or variance. (ROA.282). Neither party lodged an objection to the PSR, *see* (ROA.283, 285), although the government maintained that Mr. Williams should be held accountable for only 50 to 150 grams of cocaine base, as the parties had stipulated under the plea agreement. (ROA.283).

At Mr. Williams's sentencing hearing, the district court adopted the PSR, including its "analysis made under the sentencing guidelines." (ROA.245). Although both the government argued that the appropriate guideline level under the plea agreement was only 50 to 150 grams, the district court never responded to these arguments. *See* (ROA.245–46). Instead, the district court imposed a 235-month sentence, (ROA.248), which corresponded with the bottom of the guideline range calculated by the PSR. *See* (ROA.278–79).

The Fair Sentencing Act of 2010

On August 3, 2010, Congress enacted the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (2010). Section 2 of the Fair Sentencing Act amended 21 U.S.C. § 841(b)(1)(A)(iii) by increasing what was a 50-gram threshold to 280 grams; it also amended § 841(b)(1)(B)(iii) by increasing a formerly 5-gram threshold to 28 grams. Accordingly, had Mr. Williams committed his offense, which involved 182.23

grams of crack cocaine, after the Fair Sentencing Act was in effect, he would have faced a mandatory minimum sentence of only five years.

The First Step Act of 2018

In December 2018, Congress enacted the First Step Act of 2018. Section 404 of the First Step Act gave sentencing courts the discretion to "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." *See* First Step Act of 2018, Pub. L. No. 115-391, § 404(b), 132 Stat. 5194, 5222 (2018). The First Step Act defined 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 . . . that was committed before August 3, 2010." First Step Act of 2018, § 404(a).

Mr. Williams's Motion for Relief under the First Step Act

A short time later, Mr. Williams filed a motion with the district court, asking for appointed counsel to assist him in seeking sentencing relief under the First Step Act. (ROA.201–02). The district court granted that motion and appointed the Federal Public Defender. (ROA.204).

On June 14, 2019, Mr. Williams's appointed counsel filed a motion for a sentence reduction under Section 404 of the First Step Act. (ROA.211–19). That motion explained that Mr. Williams was eligible for sentencing relief because (1) his offense was a covered offense under Section 404 of the First Step Act because the sentencing range for his offense under 21 U.S.C. § 841(b)(1)(A) had been reduced from a range of ten years to life to a range of five to forty years; (2) Mr. Williams's offense

concluded prior to August 3, 2010; and (3) Mr. Williams had received not sought or obtained prior sentencing relief under the First Step Act. (ROA.214–15).

In addition to demonstrating Mr. Williams's eligibility for sentencing relief, the motion articulated just how radically different Mr. Williams's sentencing would were he to be resentenced under the current sentencing guidelines and statutory structure, in comparison to the sentencing framework he faced in 2006 before the passage of the Fair Sentencing Act and the First Step Act. (ROA.215–16). Mr. Williams explained that, after applying these changes, Mr. Williams's adjusted total offense level would be 25, his CHC would be V, and his guideline imprisonment range would be 100 to 125 months. (ROA.216). He explained that he had already served 156 months on this conviction—more than the upper end of his hypothetical currently applicable guidelines—even though at his original sentencing neither the government, the Probation Office, nor the district court believed that an upward departure or variance was called for. (ROA.216–18). In light of these changed circumstances, Mr. Williams asked for the district court to resentence him to time served. (ROA.218).

Almost a year passed after the filing of Mr. Williams's motion for sentencing relief in June of 2019 before the district court took action on that motion in June of 2020 by ordering the government to respond to that motion. (ROA.220). The government responded with a brief that acknowledged Mr. Williams's eligibility for sentencing relief under the First Step Act but that also argued against relief being granted. (ROA.230–31). The government explained its opposition to a reduction in one short, two-sentence paragraph:

> But "[t]hat [Williams] is eligible for resentencing does not mean he is entitled to it . . . . The sentencing court has broad discretion, since 'nothing' in the FSA 'shall be construed to require a court to reduce any sentence.'" [*United States v.*] Jackson, 945 F.3rd [315, 321 (5th Cir. 2019)] (quoting First Step Act of 2018, Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222 (2018); other internal quotation marks omitted). In particular, Williams' long history of aggravated assaults; possession and distribution of drugs, specifically crack cocaine; and having firearms in spite of being a convicted felon is a continuous threat to the safety of the community.

(ROA.231).

Mr. Williams replied, arguing that the government's three stated reasons for opposing relief—the "long history of aggravated assaults," his "possession and distribution of drugs," and having illegally possessed a firearm after suffering a felony conviction—were unpersuasive reasons for denying relief. (ROA.233–38). First, Mr. Williams argued that the government's claim that Mr. Williams had a "long history of aggravated assaults" had grossly exaggerated Mr. Williams's single adjudication for aggravated assault when he was 13 years old. (ROA.235). Second, Mr. Williams argued that his history of possession and distribution of drugs should not weigh against him because (1) that history was already accounted for in the PSR's criminal history calculations; (2) the district court did not deem him worthy of an upward departure or variance at the time of original sentencing; and (3) by passing the First Step Act and its retroactive application of the changes of the Fair Sentencing Act, Congress expressed its intent to permit sentencing reductions for defendants whose history included such convictions. (ROA.235–36). Third, Mr. Williams explained that his history of possessing firearms was accounted for in calculating his guideline range, and he reminded the district court that it had not deemed this history so

egregious as to warrant an upward departure or variance but, instead, imposed a sentence at the bottom of Mr. Williams's then-applicable guideline range. (ROA.236).

A few days later, the district court entered a one-page order denying Mr. Williams's motion. (ROA.239). Although it concluded that Mr. Williams was eligible for resentencing, the district court provided merely a one-sentence explanation for refusing to grant Mr. Williams relief: "[A]fter considering the 18 U.S.C. § 3553(a) sentencing factors, including defendant's criminal history, public safety issues, offense conduct or relevant conduct, and the post-sentencing conduct, the Court declines to reduce defendant's current term of imprisonment." (ROA.239).

Mr. Williams's Appeal to the Court of Appeals for the Fifth Circuit

On appeal, Mr. Williams argued that the district court's denial of his motion for a sentencing reduction resulted in substantively unreasonable sentence. *See* [App. A at 2). He acknowledged his argument was foreclosed by a prior published decision of the Fifth Circuit. *See* [App. A at 2].

On appeal, the Fifth Circuit granted the Government's motion for summary affirmance and affirmed the district court's decision. [App. A, at 2].

REASON FOR GRANTING THIS PETITION

I. This Court should grant review to determine whether the denials of motions for relief under Section 404 of the First Step Act are subject to substantive reasonableness review.

This Court should grant review to determine whether denials of motions for sentence reductions pursuant to Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018), are subject to review for substantive reasonableness.

In 2006, Petitioner Michael Williams was sentenced under a sentencing scheme for crack cocaine offenses that, after being "widely criticized for producing racially disproportionate sentencing outcomes," was later changed by the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372. *United States v. Collington,* 995 F.3d 347, 351 (4th Cir. 2021) (citing *United States v. Wirsing*, 943 F.3d 175, 177–78 (4th Cir. 2019)). Labeled an effort "[t]o restore fairness to Federal cocaine sentencing," Pub. L. No. 111-220, 123 Stat. at 2372, the Fair Sentencing Act made significant changes to the crack cocaine sentencing guidelines that, unfortunately for Petitioner and others like him who were sentenced before the Fair Sentencing Act's reforms, were not made retroactive.

Instead, Petitioner and other similar defendants had to wait until the First Step Act of 2018 was enacted before they could seek relief from their long-standing and long-outdated crack cocaine sentences. Section 404 of the First Step Act, entitled "Application of the Fair Sentencing Act," finally made it possible for defendants who committed a "covered" crack cocaine offense before August 3, 2010, to receive a reduced sentence by the retroactive application of the changes brought by sections 2

and 3 of the Fair Sentencing Act. Good intent notwithstanding, Section 404 has left the circuit courts with little direction with which to settle some key questions that have arisen in connection to defendants' motions for relief from their pre-Fair Sentencing Act crack cocaine sentences.

One such question concerns whether district courts' denials of Section 404 motions are subject to review by the courts of appeal for substantive reasonableness.

The majority view among the circuits is that these cases are not open to reasonableness challenges. At least five circuits have chosen not to apply a reasonableness requirement to First Step Act review, although these sister circuits come to their conclusions for different reasons. *See United States v. Concepcion*, 991 F.3d 279, 288–90, 291–92 (1st Cir. 2021); *United States v. Moore*, 975 F.3d 84, 88–92, 90 n.5 (2d Cir. 2020); *United States v. Batiste*, 980 F.3d 466, 479–80 (5th Cir. 2020); *United States v. Kelley*, 962 F.3d 470, at 477–79 (9th Cir. 2020); *United States v. Mannie*, 971 F.3d 1145, 1154–55, 1158 n.18 (10th Cir. 2020).

This petition arises from the Fifth Circuit, which has concluded that substantive reasonableness is inapplicable because it had previously adopted the abuse of discretion standard of review from its approach to cases involving 18 U.S.C. § 3528(c)(2)—a statute the Fifth Circuit has sometimes distinguished from and other times analogized to the First Step Act. *See Batiste*, 980 F.3d at 479–80. Although, in making this determination, the Fifth Circuit analogized the standard of review to that applied to § 3582(c)(2), the court of appeals provided little explanation for its decision to do so:

> Although we have noted some distinctions between First Step Act sentence reduction motions and § 3582 motions, we also have found them similar in other respects. Pertinent here, in adopting an abuse of discretion standard of review for the discretionary component of a district court's First Step Act, section 404 determination, we analogized to the "abuse of discretion" standard of review applicable to "decisions whether to reduce sentences" pursuant to § 3582(c)(2). See [*United States v. Jackson*, 945 F.3d 315, 322 and n.2 (5th Cir. 2019)]. A de novo standard of review likewise applies "to the extent the court's determination turns on the 'meaning of a federal statute' such as the [First Step Act]." *Jackson*, 945 F.3d at 319 (5th Cir. 2019) (quoting [*United States v. Hegwood*, 934 F.3d 414, 417 (5th Cir. 2019)]). Given the foregoing, we similarly conclude the substantive reasonableness standard does not apply here.

Batiste, 980 F.3d. at 480. In contrast, the First Circuit applied the "abuse of discretion" standard based *not* on its approach to § 3582(c)(2) but, rather, its approach to motions under 18 U.S.C. § 3582(c)(1)(b). *Concepcion*, 991 F.3d at 288–90, 291–92. None of the courts holding the majority view have devoted extensive discussion to the applicability of the reasonableness standard.

The minority approach, however, is the better approach because the three circuit courts that have applied reasonableness review have each based their decision on language and purpose of the First Step Act itself. *United States v. Collington*, 995 F.3d 347, 358–60 (4th Cir. 2021); *United States v. White*, 984 F.3d 76, 90–91 (D.C. Cir. 2020); *United States v. Boulding*, 960 F.3d 774, 783–84 (6th Cir. 2020).

The Sixth Circuit first applied reasonableness review after considering the strong language employed by the First Step Act in describing the type of review that it anticipated for a district court would apply to merits of a Section 404 motion. *Boulding,* 960 F.3d at 784. Its reasoning exemplifies how the minority's approach is rooted in the language of the First Step Act itself:

> The First Step Act itself indicates that Congress contemplated close review of resentencing motions. Section 404(c) states that a prisoner cannot seek relief under the Act twice if the first motion was "denied *after a complete review of the motion on the merits*." § 404(c) (emphasis added). Though coming from the provision that governs repeat resentencing motions, this language shows the dimensions of the resentencing inquiry Congress intended district courts to conduct: complete review of the resentencing motion on the merits. *See also United States v. Williams*, 943 F.3d 841, 844 (8th Cir. 2019). While "complete review" does not authorize plenary resentencing, a resentencing predicated on an erroneous or expired guideline calculation would seemingly run afoul of Congressional expectations. The Sentencing Commission has acknowledged those expectations; it has "informally advised that regardless of whether resentencing under the First Step Act constitutes a plenary resentencing proceeding or a more limited sentence modification proceeding, 'the Act made no changes to 18 U.S.C. § 3553(a), so the courts should consider the guidelines and policy statements, along with the other 3553(a) factors, during the resentencing.'" [*United States v. Allen*, 956 F.3d 355, 258 n.1 (6th Cir. 2020)] (quoting *First Step Act*, ESP Insider Express (U.S. Sentencing Comm'n, Washington, D.C.), Feb. 2019, at 1, 8, https://www.ussc.gov/sites/default/files/pdf/training/newsletters/2019-special_FIRST-STEP-Act.pdf).
>
> While a district court has discretion to consider all relevant factors and has wide latitude to provide the process it deems appropriate, the language of § 404 and our cases that interpret it, stand for the proposition that the necessary review—at a minimum—includes an accurate calculation of the amended guidelines range at the time of resentencing and thorough renewed consideration of the § 3553(a) factors. In light of this authority, we hold that an opportunity to present objections, subject to reasonableness review on appeal, is part and parcel of the process due to an eligible defendant.

Boulding, 960 F.3d at 784. The D.C. Circuit and the Fourth Circuit have followed suit, with similar, although nuanced, examination of the text of the First Step Act. *See White*, 984 F.3d at 90–91; *Collington*, 995 F.3d at 358–60,

This issue is ripe for review, with a developed circuit split. This is an excellent vehicle for this Court to grant review. This issue was preserved in the in the court of

appeals below. Mr. Williams is indisputably eligible for relief under the First Step Act from a sentence that remains several years longer than the sentencing range that would have applied after the application of the Fair Sentencing Act.

This Court should grant review to determine whether the Fifth Circuit has wrongly concluded that substantive reasonableness review is inapplicable to motions under Section 404 of the First Step Act.

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 10th day of June, 2021.

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