

No. _____

IN THE
Supreme Court of the United States

TERRON MCALLISTER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a District Court adjudicating a motion for a reduced sentence under the First Step Act abuses its discretion when a defendant would have a significantly lower Guidelines range if he were sentenced at the time of the Section 404 motion than he did at the original sentencing, but the district court nonetheless denies a sentence reduction based solely on information that was already accounted for in the original sentence.

LIST OF ALL DIRECTLY RELATED PROCEEDINGS

United States Court of Appeals for the Fourth Circuit:

United States v. McAllister, 834 F. App'x 24 (4th Cir. Case No. 20-7138, January 22, 2021).

United States District Court for the Eastern District of North Carolina:

United States v. McAllister, No. 7:06-CR-44-D-1

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Petitioner Terron McAllister respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's unpublished opinion is reported at 834 F. App'x 24 and produced at Pet. App. 1a.

JURISDICTION

The district court had jurisdiction under Section 404 of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018). Mr. McAllister timely appealed to the Fourth Circuit 14 days after the district court denied his motion, which was a final judgment. The Fourth Circuit had jurisdiction under 28 U.S.C. § 1291 over that timely appeal from a final order. The Fourth Circuit issued its opinion affirming the district court's order on January 22, 2021. This Court entered an order on March 19, 2020, extending the deadline to file any petition for a writ of certiorari due on or

after that date to 150 days from the date of the lower court judgment. This petition is being timely filed on June 14, 2021. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

(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, 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 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 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 § 404.

STATEMENT

In 2007, Mr. Terron McAllister pleaded guilty to possessing with the intent to distribute crack cocaine and to possessing a firearm in furtherance of a drug trafficking crime. At the time of his sentencing, his advisory Guidelines range was 97-121 months on the drug count and 60 months mandatory consecutive on the gun count. The district court upwardly varied from that range and imposed a sentence of

180 months on the drug count and 60 months consecutive on the gun count, for a total sentence of 240 months.

In 2010, Congress promulgated the Fair Sentencing Act of 2010, which reduced the statutory imprisonment range for Mr. McAllister's drug crime but did not make those changes retroactive. *See* Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372. In 2018, Congress passed the First Step Act which made the Fair Sentencing Act changes retroactive and allowed eligible criminal defendants to move for resentencing. *See* First Step Act at § 404. Mr. McAllister moved under Section 404 of the Fair Sentencing Act for a reduction in his term of imprisonment. The United States opposed. Mr. McAllister replied, noting multiple reasons supporting his motion for a reduced sentence:

- At the time Mr. McAllister committed this crime, he was 40 years old. He is now 53 years old and has been in custody for well over a decade.
- While in custody, Mr. McAllister has worked as an orderly.
- He has diligently worked to obtain his GED, but to date, has been unable to pass the test, though he remains in classes.
- Mr. McAllister has also done a significant amount of programming, including parenting classes, drug education, and employment skills classes.
- Showing his commitment to being an engaged and productive father upon release, Mr. McAllister specifically noted that found the parenting classes most helpful.

- Mr. McAllister also has worked on developing a positive release plan, setting up electrician and brick masonry work with family members in those industries.
- Mr. McAllister also argued that he has finally “seen the light,” having lost several family members while incarcerated and had to struggle with recent health issues including pneumonia and kidney problems. These tragedies and setbacks have given him perspective and shown him that his criminal choices were not worth it.

The district court denied the motion. It recalculated Mr. McAllister’s new Guidelines range on the drug court to 78-97 months of imprisonment, a reduction from his original Guidelines range of 97-121 months of imprisonment. The Court nonetheless denied the motion, citing “McAllister’s serious criminal conduct, violent criminal record, poor performance on supervision, misconduct while incarcerated, the need to promote respect for the law, and the need to incapacitate McAllister.”

Mr. McAllister timely appealed. The Fourth Circuit affirmed “for the reasons stated by the district court.” Pet. App. 2a.

This petition follows.

REASON FOR GRANTING THE PETITION

A DISTRICT COURT ADJUDICATING A MOTION FOR A REDUCED SENTENCE UNDER THE FIRST STEP ACT ABUSES ITS DISCRETION WHEN A DEFENDANT WOULD HAVE A SIGNIFICANTLY LOWER GUIDELINES RANGE IF HE WERE SENTENCED AT THE TIME OF THE SECTION 404 MOTION THAN HE DID AT THE ORIGINAL SENTENCING, BUT THE DISTRICT COURT NONETHELESS DENIES A SENTENCE REDUCTION BASED SOLELY ON INFORMATION THAT WAS ALREADY ACCOUNTED FOR IN THE ORIGINAL SENTENCE.

By affirming the denial of Mr. McAllister’s motion, the Fourth Circuit “decided an important question of federal law that has not been, but should be, settled by this Court.” Sup. Ct. R. 10(c). Namely, what is the scope of Section 404 of the First Step Act?

“The First Step Act of 2018 was simultaneously monumental and incremental.” *United States v. Brooker*, 976 F.3d 228, 230 (2nd Cir. 2020). It instituted a sea change across multiple aspects of federal criminal law, but it did so by leaving many changes up to the discretion of district courts in individual cases. *Id.* This framework requires uniformity to ensure equal treatment of criminal defendants across the country.

This petition involves Section 404 of the Act. Litigants and district courts would benefit from guidance from this Court outlining the scope of Section 404 relief. Mr. McAlister acknowledges that Section 404 does not create an absolute right to a reduction because “Nothing in [Section 404] shall be construed to require a court to reduce any sentence pursuant to [it].” First Step Act § 404(c). But it also authorizes a district court, for certain covered offenses involving crack cocaine, to retroactively “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).

The Fourth Circuit agrees that “the Section 3553(a) sentencing factors apply in the Section 404(b) resentencing context.” *United States v. Chambers*, 956 F.3d 667, 674 (4th Cir. 2020). The Fourth Circuit also agrees that district courts can account for post-sentencing changes in the law beyond the Fair Sentencing Act when imposing sentence under Section 404. *Id.*¹ And it agreed in Mr. McAllister’s case that he had a lower Guidelines range in the Section 404 proceeding than it did at his original sentencing. But it nonetheless affirmed the district court’s denial of Mr. McAllister’s Section 404 motion for the reasons given by the district court.

That was error that would benefit from this Court’s review. Mr. McCallister presented significant evidence of post-sentence rehabilitation, all of which related to the Section 3553(a) factors. In rejecting his motion, the district court relied almost exclusively on Mr. McAllister’s offense conduct and pre-conviction behavior. The district court, of course, already considered these factors when imposing the original sentence. Now that Mr. McAllister has a reduced Guidelines range, they cannot support the further decision to maintain the same sentence. The only post-sentencing conduct that the district court noted to support its decision was an infraction for lying and an infraction for tobacco use. These picayune transgressions

¹ There is an arguable circuit split on this point that is before this Court in a petition for a writ of certiorari in *Kelly v. United States*, No. 20-7474.

simply do not support the district court's decision when weighed in the context of the Section 3553(a) factors.

Clarity from this Court on that point would be useful.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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