

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 20-1615

UNITED STATES OF AMERICA

v.

KRISHNA MOTE,
aka "Chris"
aka "Kris",
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal Action No. 3:11-cr-00194-001)
District Judge: Honorable James M. Munley

Submitted Pursuant to Third Circuit LAR 34.1(a)

October 23, 2020

Before: GREENAWAY, JR., KRAUSE and BIBAS, Circuit Judges

(Opinion filed: December 10, 2020)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Krishna Mote appeals pro se appeals from an order of the United States District Court for the Middle District of Pennsylvania denying his motion to reduce his sentence under section 404 of the First Step Act of 2018. We will affirm.

In 2007, a federal grand jury indicted Mote on charges of conspiring to distribute more than 50 grams of crack cocaine and 500 grams of powder cocaine. The District Court ultimately dismissed that indictment without prejudice due to a speedy trial violation. In 2011, the Government obtained another indictment against Mote based on the same conspiracy, but this time it charged that the conspiracy involved 280 grams of crack cocaine, along with 500 grams of powder cocaine. In 2012, a jury found Mote guilty of (1) conspiring to distribute 280 grams or more of crack cocaine and 500 grams or more powder cocaine, see 21 U.S.C. § 846, and (2) aiding and abetting the distribution of crack cocaine, see 21 U.S.C. § 841(a)(1); 18 U.S.C. § 2. In May 2013, the District Court imposed a mandatory sentence of life imprisonment on the conspiracy conviction (based on Mote's prior felony drug convictions, see 21 U.S.C. § 841(b)(1)(A) (2010)), and sentenced Mote to 360 months in prison on the aiding and abetting conviction. We affirmed. See United States v. Mote, 553 F. App'x 117, 118 (3d Cir. 2014) (not precedential) (noting that, "with three prior felony convictions, the District Court properly sentenced [Mote] to a mandated life imprisonment."), cert. denied, 134 S. Ct. 2716. Mote filed a pro se motion under 28 U.S.C. § 2255. The District Court denied that motion on the merits, and we denied a certificate of appealability. See United States v. Mote, C.A. No. 15-1409 (order entered Nov. 3, 2015). On October 6, 2017, President

Obama granted clemency, and Mote's sentence was commuted to 240 months of imprisonment.

In November 2019, Mote filed a pro se "Motion for Hearing and Reduced Sentence Under the First Step Act."¹ (ECF 178.) The Government opposed that motion, arguing that Mote was not entitled to relief because he had already been sentenced in accordance with the First Step Act, which made retroactive certain provisions of the Fair Sentencing Act. (ECF 182.) The District Court denied the motion, holding that "Mote has already received the benefit of the Fair Sentencing Act's relevant modifications" Mote appealed.²

In 2010, Congress enacted the Fair Sentencing Act, which reduced the sentencing disparity between crack cocaine and powder cocaine. Dorsey v. United States, 567 U.S. 260, 269 (2012); see also United States v. Jackson, 964 F.3d 197, 200 n.2 (3d Cir. 2020). Section 2 of the Fair Sentencing Act increased the quantity of cocaine base required to trigger mandatory minimum sentences.³ For example, it raised the threshold for the 10-

¹ Pursuant to a standing order pertaining to actions brought under Section 404 of the First Step Act, the District Court appointed the Federal Public Defender's Office to represent Mote. (ECF 179.) That Office later successfully moved to withdraw, noting that it "and Mr. Mote have a difference of opinion concerning the application of ... the First Step Act to the facts of his case." (ECF 180).

² We have jurisdiction under 28 U.S.C. § 1291, and we exercise plenary review over the District Court's order. See United States v. Easter, -- F.3d --, 2020 WL 5525395, at *3 (3d Cir. Sept. 15, 2020).

³ Section 3 of the Fair Sentencing Act, which is not relevant here, eliminated the mandatory minimum for simple possession in violation of 21 U.S.C. § 844(a). See United States v. Shaw, 957 F.3d 734, 736 (7th Cir. 2020).

year mandatory minimum sentence from 50 grams to 280 grams. Id. at 269. The First Step Act, enacted in 2018, made Sections 2 and 3 of the Fair Sentencing Act retroactively applicable. See Easter, 2020 WL 5525395, at *2; see also United States v. Boulding, 960 F.3d 774, 777 (6th Cir. 2020). In particular, Section 404(b) of the First Step Act provided that the 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 the covered offense was committed.” § 404(b), 132 Stat. 5194, 5222. Notably, however, the First Step Act expressly prohibited application of 404(b) where the “sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act” First Step Act, Pub. L. No. 115-391, § 404(c), 132 Stat. at 5222. Here, the District Court sentenced Mote in May 2013, several years after the Fair Sentencing Act was enacted. Thus, Mote already received the benefit of the Fair Sentencing Act’s reduced penalties for crack-cocaine offenses.⁴ See Dorsey v. United States, 567 U.S. 260, 281

⁴ In his brief, Mote notes that the Government stated in its response to his § 2255 motion that his “sentence in this case was not determined by the Fair Sentencing Act or by the sentencing guidelines.” Pet’r’s Br., 4. Read in context, however, it appears that the Government was not asserting that Mote was subject to a pre-Fair Sentencing Act sentencing scheme. Rather, the Government seemingly was noting that Mote’s mandatory life sentence was imposed as a result of his prior felony convictions. (ECF 148, at 9.) In any event, it is clear from the record that Mote was sentenced in accordance with the Fair Sentencing Act, which changed the law in his favor by increasing the quantity of crack cocaine needed to trigger mandatory minimum penalties. Before the Fair Sentencing Act, and at the time of Mote’s conduct, Mote would have been subject to a sentence of life imprisonment even if his conviction involved only 50

(2012) (concluding that “that Congress intended the Fair Sentencing Act’s new, lower mandatory minimums to apply to the post-Act sentencing of pre-Act offenders”).

Accordingly, the District Court properly concluded that Mote is not eligible for relief under section 404(b) of the First Step Act. See United States v. Jones, 962 F.3d 1290, 1297 (11th Cir. 2020) (stating that “[a] district court may not ‘entertain a motion’ from a defendant who already benefitted from the Fair Sentencing Act by having his sentence imposed or reduced ‘in accordance with’ sections two or three of the Fair Sentencing Act”).

For the foregoing reasons, we will affirm the District Court’s judgment.

grams of crack cocaine. See 21 U.S.C. § 841(b)(1)(A) (2006 version).

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No. 20-1615

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v.

KRISHNA MOTE,
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Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal Action No. 3:11-cr-00194-001)
District Judge: Honorable James M. Munley

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 23, 2020
Before: GREENAWAY, JR., KRAUSE and BIBAS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on October 23, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered March 13, 2020, be and the same is hereby affirmed. Costs are not taxed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: December 10, 2020

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1615

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v.

KRISHNA MOTE,
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Appellant

On Appeal from the United States District Court
For the Middle District of Pennsylvania
(D.C. Criminal No. 3-11-cr-00194-1).
District Judge: Honorable James M. Munley

PETITION FOR REHEARING

Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, and PHIPPS, *Circuit Judges*.

The petition for rehearing filed by Appellant in the above-entitled case having
been submitted to the judges who participated in the decision of this Court and to all the
other available circuit judges of the circuit in regular active service, and no judge who
concurred in the decision having asked for rehearing, and a majority of the judges of the

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Joseph A. Greenaway, Jr.
Circuit Judge

Dated: June 11, 2021
PDB/cc: Krishna Mote
Francis P. Sempa, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	No. 3:11cr194
	:	No. 3:14cv1717
v.	:	(Judge Munley)
	:	
KRISHNA MOTE,	:	
Defendant	:	

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ORDER

Presently before the court are the following two motions: (1) a *pro se* "Motion for Hearing and Reduced Sentence Under the First Step Act," filed by the defendant, Krishna Mote, (Doc. 178); and (2) a Motion to Withdraw as Counsel, filed by the Federal Public Defender's Office. (Doc. 180). These motions are now ripe for disposition.

Background and Procedural History

On June 7, 2011, a federal grand jury returned a two (2) count indictment against Defendant Mote that charged him with: conspiracy to distribute in excess of 280 grams of cocaine base (crack) and in excess of 500 grams of cocaine, in violation of 21 U.S.C. § 846 ("Count 1"); and aiding and abetting the possession and distribution of cocaine base (crack), in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 ("Count 2"). (Id.) On December 6, 2012, a jury found Defendant Mote guilty on both counts. (Doc. 103, Verdict). On May 15, 2013 Defendant Mote was sentenced to a term of life imprisonment for Count 1 and a term of 360

months' imprisonment for Count 2. (Doc. 136, Judgment). The United States Court of Appeals for the Third Circuit affirmed Defendant Mote's sentence on January 31, 2014; however, United States President Barack Obama commuted Defendant Mote's life sentence to a term of 240 months' imprisonment on October 6, 2016. (Doc. 138, Judgment of USCA; Doc. 155, Executive Grant of Clemency).

After a lengthy procedural history, Defendant Mote filed the instant Motion for Reduction of Sentence on November 6, 2019. (Doc. 178). The Federal Public Defender's Office was appointed to represent Defendant Mote pursuant to the court's Standing Order 19-01, (Doc. 179), but filed a motion to withdraw as counsel on November 13, 2019. (Doc. 180, Mot. to Withdraw). Upon the court's direction, the government filed a brief in opposition to Defendant Mote's motion on December 23, 2019. (Doc. 182). Defendant Mote subsequently filed a reply brief on January 3, 2020, bringing this case to its present procedural posture. (Doc. 183).

Discussion

In his motion, Defendant Mote seeks to reduce his sentence pursuant to Section 404 of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018). The government argues that the First Step Act does not provide Defendant Mote with the relief he seeks, as he was already sentenced in accordance with the Fair

Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (2010). After careful consideration, we agree with the government.

To reduce the sentencing disparity between cocaine and cocaine base (crack) offenses, Congress, through Section 2 of the Fair Sentencing Act of 2010 (the “Fair Sentencing Act”), increased the amount of cocaine base that subjects criminal defendants to the five-year and ten-year mandatory minimum sentences enumerated by 21 U.S.C §§ 841(b)(1)(A)(iii) and 841(b)(1)(B)(iii). See Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2, 124 Stat. 2372, 2372 (2010). Specifically, Section 2 of the Fair Sentencing Act increased the threshold quantity of cocaine base from “50 grams” to “280 grams” with respect to 21 U.S.C. § 841(a)(1)(A)(iii), and from “5 grams” to “28 grams” with respect to 21 U.S.C. § 841(b)(1)(B)(iii). Id. at § 2(a).

On December 21, 2018, Congress enacted the First Step Act, which gave retroactive effect to Section 2 of the Fair Sentencing Act. See First Step Act of 2018, Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222 (2018). In relevant part, the First Step Act authorizes federal district courts, on a motion made by the defendant, to impose a reduced sentence for a covered crack offense as if Section 2 of the Fair Sentencing Act was in effect when the covered offense was committed. Id. at § 404(b). As defined under the First Step Act, a “covered offense” is a “violation of a Federal criminal statute, the statutory penalties for

which were modified by section 2 . . . of the Fair Sentencing Act . . . , that was committed before August 3, 2010.” Id. at § 404(a). There are certain limitations to the First Step Act, however, insofar as a court may not entertain a motion under its provisions if a defendant’s sentence “was previously imposed, or previously reduced, in accordance with the amendments made by section[] 2 . . . of the Fair Sentencing Act . . . ” Id. at § 404(c).

Here, Defendant Mote was both indicted and sentenced after the Fair Sentencing Act came into effect. See United States v. Dixon, 648 F.3d 195, 203 (3d Cir. 2011) (holding that the “[Fair Sentencing Act] requires application of the new mandatory minimum sentencing provisions to all defendants sentenced on or after August 3, 2010, regardless of when the offense conduct occurred.”). Count 1 of the indictment, of which a jury found Defendant Mote guilty beyond a reasonable doubt for conspiring to distribute or possessing with intent to distribute 280 grams or more of cocaine base, also reflects the amended weight for cocaine base offense penalties articulated in Section 2 of the Fair Sentencing Act. *Compare* 21 U.S.C. § 841(b)(1)(A)(iii) (effective Aug. 3, 2010 to Dec. 20, 2018) (imposing a mandatory minimum sentence for violations of § 841(a) that involve 280 grams or more of cocaine base) *with* 21 U.S.C. § 841(b)(1)(A)(iii) (effective Apr. 15, 2009 to Aug. 2, 2010) (imposing a mandatory minimum sentence for violations of § 841(a) that involve 50 grams or more of cocaine

base). Therefore, Defendant Mote has already received the benefit of the Fair Sentencing Act's relevant modifications under Section 2, which increased the threshold amounts necessary to trigger the mandatory minimum sentences for certain crack cocaine offenses. As such, the court cannot consider Defendant Mote's motion pursuant to the limitations set forth in § 404(c) of the First Step Act.

AND NOW, IT IS HEREBY ORDERED THAT the defendant's *pro se* "Motion for Hearing and Reduced Sentence Under the First Step Act," (Doc. 178), is **DENIED** and the Federal Public Defender's Office Motion to Withdraw as Counsel, (Doc. 180), is **GRANTED**.

BY THE COURT:

Date: March 12, 2020

/s James M. Munley
JUDGE JAMES M. MUNLEY
UNITED STATE DISTRICT COURT