No. 21-6431

IN THE

SUPREME COURT OF THE UNITED STATES

VEGAS D. SMITH — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Vegas D. Smith #33620-183
(Your Name)

F.C.I. Hazelton, P.O. Box 5000
(Address)

Bruceton Mills, West Virginia 26525
(City, State, Zip Code)

n/a
(Phone Number)

QUESTION(S) PRESENTED

1.] Did the Court of Appeals for the Fourth Circuit commit error when it affirmed the District Court's decision to deny petitioner's motion filed under 18 U.S.C. § 3582(c)(2) without providing some explanation of its decision on the record?

2.] Did the Court of Appeals commit error by ruling contrary to precedent and law of the Fourth Circuit Court of Appeals?

3.] Did the District Court commit error by not considering petitioner's argument raised in his § 3582(c)(2) motion regarding his career offender designation?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- United States v. Vegas D. Smith, No. 3:07-cr-227-HEH, U.S. District Court for the Eastern District of Virginia. Judgment entered Nov. 19, 2007.

- United States v. Vegas D. Smith, No. 20-6859, U.S. Court of Appeals for the Fourth Circuit. Judgment entered Mar. 22, 2021.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 22, 2021.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 5, 2021, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

LEGISLATIVE MATERIALS

UNITED STATES SENTENCING GUIDELINES

STATEMENT OF THE CASE

At the outset, Vegas D. Smith, hereinafter referred to as petitioner, reminds this Honorable Court that he is proceeding pro se and prays this Honorable Court apply liberal construction to the instant filing as afforded all pro se litigants/ inmates. (Haines v. Kerner, 404 U.S. 519 (1972)).

Petitioner was charged in June of 2007 with a federal drug trafficking offense and two firearms offenses. The drug offense involved petitioner's possession with intent to distribute five or more grams of cocaine base (or crack cocaine) in violation of 21 U.S.C. § 841(a), and § 841(b)(1)(B)(Count One). The first of the two firearms offenses was possession of a firearm in furtherance of a drug trafficking crim(Count Two, 18 U.S.C. § 924(c)), and the other was possession of a firearm by a convicted felon(Count Three, 18 U.S.C. § 922(g)(1)).

Petitioner pled guilty to the Possession with Intent to Distribute count and the § 924(c) count, pursuant to a plea agreement. According to the statement of facts supporting the plea, federal ATF agents observed petitioner conducting possible hand-to-hand drug deals and also saw him go in and out of a house several times during their surveillance. Furhter, when the agenst first approached petitioner, they saw a plastic bag sticking out of a pocket that turned out to contain 97 hits of crack in individual wrappers. When conducting a consensual search fo the house, the agents found a firearm inside. After the agents confronted petitioner with the gun, petitioner advised the agents that the gun was his and that he had bought it for $100 to protect him because cocaine dealers were being robbed due to cocaine shortages in the area.

In preparing the presentence report on petitioner, the probation officer attributed 8.645 grams of crack cocaine to petitioner. Based on that weight, petitioner's base offense level under U.S.S.G. § 2D1.1 was 24. No points were assigned for possession of a firearm in connection with the drug trafficking offense

(because of the § 924(c) conviction), role in the offense, or for obstruction or reckless endangerment. After petitioner received all three points for acceptance of responsibility, petitioner's offense level as determined under Chapters Two and Three of the Guidelines Manual was 21.

For criminal history, the presentence report included a quite lengthy list of juvenile adjudications and a lengthy list of adult convictions. Both lists included drug offenses, for either marijuana or crack cocaine, the listing of adult convictions also included numberous driving offenses. The officer assigned a total of 14½ points, which placed petitioner in criminal history category VI: one conviction received three points, two convictions received two points, four convictions received one point each, and the remaining convictions received no points; as well, two points were added for committing the offense while under another sentence sentence, and one point was added for committing the instant offense less than two years after release from imprisonment. The combination of offense level 21 and criminal history category VI resulted in an advisory sentencing range of 77 to 96 months.

However, because two of petitioner's convictions were for controlled substance offenses, he was deemed to be a career offender. The two prior convictions stemmed from offenses occurring three months apart, at the end of December 2000 and at the end of March 2001, when petitioner was only 19 years old. While the quantity of cocaine involed in the earlier offense was not specified, the second offense involved less than one gram. The career offender designation increased the guideline range to 262 to 327 months because of the § 924(c) count.

In advance of sentencing in November of 2007, both sides filed two paragraph sentencing positions indicating that they had no objections or corrections to the presentence report. The government requested a sentence within the range, whereas defense counsel requested a sentence at the low end of the range.

At sentencing, which lasted less than ten minutes, the Honorable District Court confirmed that neither side had any objection to the presentence report, and that neither side had any evidence. The government reiterated its reques for a sentence within the guideline range.

Teh court next turned to defense counsel, giving counsel its take on the case. The court began by stating, "To say that your client has a horrendous criminal record is to be generous. It may set a record in this court." But, the court continued, "[a]ll that having been said, your client is 25-years old, no marketable skills, undereducated and this Court believes that probably the low end of the guidelines would be appropriate because all that notwithstanding, the guidelines at the low end are extremely high." Stating that "I can't argue with that," counsel briefly pointed out that petitioner suffers from some health issues, including asthma and long-standing pain in his legs from being shot. In addition to requesting a sentence at the bottom of the range, counsel also requested a recommendation from the court for petitioner to be placed in the 500 hour drug treatment program and to receive vocational training.

The court then turned to petitioner. Petitioner apologized to the court, his children adn family, and to the community for his wrongdoing, and asked the court to give the lowest time possible on his guidelines. The court responded, "I have decided to sentence you at [the] lowest end of the guidelines but not because it is any kind of reward." Reiterating its comments to defense counsel, the court told petitioner, "You have a horrible, horrible criminal record..." But, the court went on, it was giving the bottom of the range "simply because for a young man your age, I think it's the collective viewpoint of most people here that [262 months] is a sufficient sentence."

The court then ordered for petitioner to be imprisoned for 202 months on the crack cocaine offense, to be followed by 60 months on the § 924(c) count, for a total of 262 months in prison. The court included recommendations that petitioner

be allowed to participate in the 500 hour drug rehabilitation program and in vocational training and education programs. Finally, the court imposed concurrent five year terms of supervised release on the two counts.

At the conclusion of the sentencing hearing, the court addressed petitioner again, urging him to take advantage of the time he would spend in prison. "Complete those educational programs. Learn a good trade, a good vocation, so when you come out you will have a means of being able to support yourself and your family so you don't have to sell drugs or participate in illegal activity. Use it as a learning period, okay, sir?" Petitioner answered the court, "Yes, sir."

Thirty months after petitioner's sentencing, Congress enacted the Fair Sentencing Act of 2010 on August 3, 2020. See Kimbrough v. United States, 552 U.S. 85, 97-99 (2007); Dorsey v. United States, 567 U.S. 260, 268-69 (2012). Section 2 of the Act modified the statutory penalties for crack offenses by increasing the amount of crack necessary to support the statutory ranges for conviction under § 841(b)(1)(A) from 50 grams to 280 grams, for convictions under § 841(b)(1)(B) from 5 to 28 grams, and for convictions under § 841(b)(1)(C) from less than 5 to less than 28 grams. See Pub. L. No. 111-220, § 2, 124 Stat. 2372 (Aug. 3, 2010). These changes reduced the 100:1 ratio to an 18:1 ratio. Congress, however, did not apply these changes retroactively to defendants, such as petitioner, who were sentenced before the Act's passage.

In part to rectify the injustice of sentencing disparity caused by the non-retroactivity of the Fair Sentencing Act eight years earlier, Congress enacted the First Step Act of 2018 on December 18, 2018, and it was signed into law three days later. Section 404 of the First Step Act made §§ 2 and 3 of the Fair Sentencing Act retroactive to offenders who were sentenced before its enactment. See Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222(codified at 21 U.S.C. § 841 note).

Under §0404 of the First Step Act, eligibility for retroactive application of the Fair Sentencing Act turns on whether the defendant was previously sentenced

for a "covered offense." Congress defined a "covered offense" in § 404(a) of the First Step Act 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 [] that was committed before August 3, 2010."

In § 404(b), Congress made the reduced statutory penalties for crack cocaine offenses retroactive by authorizing any court that "imposed a sentence for a covered offense" to now "impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing of 2010 [] were in effect." In § 404(c), Congress set forth two limited exceptions to eligibility for relief. First, a court may not reduce any sentence that was "previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010." Second, a defendant may not receive a reduced sentence if he filed a previous First Step Act motion that was "denied after a complete review of the motion on the merits."

Together, these provisions define threshold eligibility broadly while entrusting sentencing courts to exercise their traditional discretion by determining whether the sentencing factors under 18 U.S.C. § 3553(a) warrant a reduction. In doing so, the provisions carry out the Act's purpose of "allow[ing] prisoners sentenced before the Fair Sentencing Act of 2010 reduced the 100-to-1 disparity in sentencing between crack and powder cocaine to petition the court for an individualized review of their cases." S. Comm. on the Judiciary, 115th Cong., The First Step Act of 2018 (S. 3649) - as introduced (Nov. 15, 2018), at 2; see also 164 Cong. Rec. S7745-01, S7748 (Dec. 18, 2018)(Statement of Sen. Klobuchar)("[T]he bill simply allows people to petition courts...for an individualized review based on the particular facts of their case.").

In March of 2019, petitioner, through counsel, moved for a reduction in his sentence pursuant to the First Step Act. Petitioner requested a reduction of his 202 month sentence on Count One to 169 months (or 33 months lower), a decrease of only about 16.3 percent and about 12.5 percent of his total 262 month sentence.

The government opposed any reduction of petitioner's sentence. The essence of the government's opposition was that if the Fair Sentencing Act had been in effect at the time of petitioner's sentencing in 2007, his guidelinesrange would not have changed because of his career offender status and his § 924(c) conviction.

In reply, petitioner first countered the government's ineligibility arguments. As to why the court should exercise its discretion to reduce petitioner's sentence by less than three years, counsel offered several grounds.

Starting with petitioner's post sentencing conduct, counsel stressed that petitioner had worked hard to rehabilitate himself since his sentencing twelve years earlier. Echoing the court's words to him at the end of his sentencing, petitioner himself wrote that he could "truly say" that prison has been "a learning experience" for him. "Complete those educational programs. Learn a good trade, a good vocation...Use it as a learning period, okay, sir?" This is the quote from the Judge during petitioner's sentencing hearing. Petitioner wrote that "[b]eing incarcerated saved me in ways I never thought. It taught me things, matured me in ways I have never thought of."

In particular, counsel explained, petitioner spent over three hundred hours formally studying for his GED, which he earned in July of 2010. According to counsel, that achievement "represented an exceptional feat of perseverance, maturity, and responsibility for a man with 'significant learning problems,'" especially when "[m]any less dedicated individuals would have given up trying for their GED a hundreds of hours before Mr. Smith."

As well, counsel pointed out, petitioner had accrued only two minor disciplinary infractions while in the Bureau of Prisons in his twelve years of incarceration, both within the first six and a half years, and none in the last five and a half years. The first infraction was for being absent from assignment in the first part of 2010, and the second was for stealing in 2013.

Turning to petitioner's criminal history, counsel stressed that he has not convictions for crimes of violence, and that his career offender designation was based solely on two drug prior distribution offenses. The sentencing court even recognized as much and stated on the record that "I don't see any crimes of violence here at all." Counsel then explained at some length the recommendation in 2016 by the U.S. Sentencing Commission that Congress eliminate the career offender designation for offenders with "drug only" priors. Indeed, nearly half of counsel's argument in mitigation focused on the Commission's report to Congress about the career offnder guideline. Petitioner's counsel filed the First Step Act reply motion on April 17, 2020.

Over one year later, the district court still had not ruld on petitioner's First Step Act motion. By this time, in April of 2020, the worldwide pandemic caused by the novel coronavirus was well underway and prisons within the B.O.P. were beginning to experience outbreaks. And by late April, two dozen federal inmates had died from COVID-19.

On April 23, 2020, petitioner's counsel filed a time-sensitive supplemental memorandum to his First Step Act motion asking the court to consider petitioner's heightened risk of suffering severe illness should he contract the virus, due to his asthma. The government treated the supplemental memorandum as a motion for compassionate release and opposed it.

Eleven days after the government filed its opposition, the court issued its ruling on petitioner's First Step Act motion. The court rejected the government's argument that petitioner was ineligible for a reduction because his guideline range did not change, and instead found petitioner eligible for a reduction. Exercising its discretion, however, the court denied a reduction to petitioner.

In explanation as to why it was declining to exercise its discretion, the court focused almost entirely on petitioner's criminal record, even quoting from the transcript of the original sentencing hearing. The court also stressed that

petitioner's guideline range did not change. The court asserted that it had considered petitioner's post sentencing conduct, including his institutional record and participation in vocational and educational classes. In the court's view, however, "having considered the materials before the Court, Defendant's offense conduct and prior criminal history, and the § 3553(a) factors - particularly the need to promote respect for the law, protect the public, and provide for adequate deterrence - [the] Court declined to exercise its discretion under the First Step Act to reduce Defendant's sentence." At no point in its ruling, however, did the court address petitioner's argument about the career offender guideline setting too harsh a range for offenders like him, with two prior drug convictions.

The court issued its decision on May 26, 2020. Petitioner noted his appeal on June 9.

On appeal, petitioner argued that the district court committed reversible error when it gave an insufficient explanation for denying his § 404 motion. More specifically, petitioner contended that the court erred by failing to even acknowledge, much less explain why it rejected, the substantial argument he presented concerning his designation as a career offender, which he offered as the primary argument in support of his request for a modest reduction of his sentence. In so arguing, petitioner relied on the Fourth Circuit Court of Appeals' decision in United States v. Martin, 916 F.3d 389 (4th Cir. 2019)(holding that district court must consider arguments and evidence in support of reduction in sentence under 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10, and that failure to sufficiently explain its consideration constitutes reversible error), suggesting that the decision should be extended from the § 3582(c)(2) context to the §3582(c)(1)(B) context.

On January 22, 2021, after the briefing in petitioner's case was complete, the Fourth Circuit decided United States v. McDonald, 986 F.3d 402 (4th Cir. 2021).

In McDonald, the Court considered how much of an explanation a district court must give when it rules on a § 404(b) motion. The court applied Martin in the context of a sentence reduction motion filed pursuant to § 3582(c)(1)(A) and § 404 of the First Step Act. 986 F.3d at 408-12. The court held that a district court must provide an individualized explanation for denying a sentence reduction motion under § 3582(c)(1)(B) and § 404 when the defendant presents arguments concerning his post-sentencing rehabilitation. Id. at 412. In providing that individualized explanation, the district court may "consider the facts of defendant [a defendant's] original transgressions," but the court "must also at least weigh [the defendant's] conduct in the years since [his] initial sentencing[]." Id.

Less than six weeks later, on March 2, 2021, the 4th Circuit decided United States v. Randall, 837 F. App'x 1008 (4th Cir. 2021). Like petitioner, Mr. Randall challenged the sufficiency of the district court's explanation for denying his § 404 motion. Applying McDonald, the Fourth Circuit vacated the district court's ruling and remanded for reconsideration, in part because "the district court's order [did] not address Randall's argument[]...that - after Randall was sentenced - the United States Sentencing Commission issued an August 2016 report to Congress that disapproves of applying the career offender enhancement, see U.S. Sentencing Guidelines Manual § 4B1.1 (2018), to nonviolent drug offenders." Id. at 1009.

Petitioner's case was submitted to a panel of the Fourth Circuit Court of Appeals on March 18, 2021. Four days later, the panel issued its decision, in an unpublished per curiam opinion without argument. The one paragraph reads as follows:

> Vegas Devon Smith appeals the district court's order denying his motion seeking a sentence modification under § 404(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

The decision did not mention McDonald.

Two days after its decision in petitioner's case, the Fourth Circuit decided United States v. Brock, 2021 WL 1117015 (4th Cir. Mar. 24, 2021). As in Randall, when vacating and remanding Mr. Brock's case, the Court relied on McDonald and found that the district court's ruling "did not reveal whether the court considered... [Brock's] argument that a reduction was appropriate because he was no longer a career offender." Id. at *1.

On April 5, 2021, petitioner filed a motion for rehearing with the Fourth Circuit Court of Appeals. In said motion petitioner cited as reasons for granting the petition the fact that the Court of Appeals had overlooked two decisions issued after briefing in petitioner's case was completed, and its decision in petitioner's case was inconsistent with both of those decisions as well as with the Court's third decision.

Petitioner stated, in his motion for rehearing that, in his original briefing petitioner relied upon United States v. Martin, 916 F.3d 389 (4th Cir. 2019). In Martin, petitioner stated, the Fourth Circuit vacated the District Court's orders denying sentence reductions under 18 U.S.C. § 3582(c)(2) because the district court failed to address several mitigating arguments advanced by the defendants. 916 F.3d at 397-98. Each had presented to the court arguments about post-sentencing mitigation such as positive prison records (including educational and vocation programming and employment record while in prison), and age and health, among other things. Id. at 392-394. In neither case did the district court individually address these arguments. Id. The Fourth Circuit held that the district court failed "to follow our precedent which requires a district court to consider evidence of post sentencing mitigation that would be relevant to the § 3553(a) factors." Id. at 397.

Petitioner went on to cite the Fourth Circuit's rulings in McDonald and Randall as reasons for granting his motion for rehearing. On August 17, 2021, the Fourth Circuit denied petitioner's motion for rehearing and issued its mandate on August 26, 2021.

REASONS FOR GRANTING THE PETITION

This Honorable Court should grant petitioner's petiton for the compelling reason(s) petitioner herein and herenow raises. Namely, whether or not court's must consider post sentencing mitigating factors and evidence when deciding and ruling on motions seeking sentence reductions pursuant to § 3582(c) and whether the court must state or provide an individualized explanation for denying a sentence reduction motion filed under § 3582(c) and § 404.

This Honorable Court should also grant the instant petition to decide whether the District Court and Courts of Appeals themselves are required to follow the precedent of the Courts of Appeals in their respective jurisdictions and orders issued by separate panels in their own jurisdictions.

Again, in petitioner's briefing before the Fourth Circuit Court of Appeals, petitioner relied upon United States v. Martin, 916 F.3d 389 (4th Cir. 2019). In Martin, the Fourth Circuit vacated a district court's orders denying sentence reductions under 18 U.S.C. § 3582(c)(2) because the district court failed to address several mitigating arguments advanced by the defendants. 916 F.3d at 397-98. Each had presented to the court arguments about post-sentencing mitigation such as positive prison records (including educational and vocation programming and employmnet record while in prison), and age and health, among other things. Id. at 392-94. In neither case did the district court individually address these arguments. Id. The Fourth Circuit held that the district court had failed "to follow our precedent which requires a district court to consider evidence of post-sentencing mitigation that would be relevant to the § 3553(a) factors." Id. at 397.

After the briefing in petitioner case before the Fourth Circuit Court of Appeals, approximately two years later, the Fourth Circuit decided United States v. McDonal, 986 F.3d 402 (4th Cir. 2021). In McDonald, the Court recognized that

Martin arose in the context of a sentencing reduction under § 3582(c)(2), while the § 404 reduction at issue here falls under 3582(c)(1)(B). (86 F.3d at 411. The Court of Appeals also recognized that nothing in Martin made it distinguishable based on which particular subsection of § 3582 is at issue. Put another way, nothing in Martin's holding depends on specific language in subsection (c)(2). In fact, the logic underlying the opinion - that a district court has the basic obligation to consider nonfrivolous arguments in mitigation and provide at least some explanation of its decision on the record, and "must not leave both the defendant and the appellate court in the dark as to the reasons for its decision" - applies equally to sentence reductions under either portion of § 3582(c). See McDonald, 936 F.3d at 412 (quoting Martin, 916 F.3d at 398). Accordingly, the Court in McDonald did not hesitate to extend the logic of Martin to the § 3582(c)(1)(B)/§ 404 context. See 986 F.3d at 411. To the extent any material difference exists between the two subsections, that difference would require **greater** consideration and explanation in a (c)(1)(B) case like petitioner's than in a (c)(2) case like Martin. This is because district courts have broader authority to grant sentence reductions under § 3582(c)(1)(B) than under § 3582(c)(2) for they are not limited to duigeline-based reductions. Wirsing, 943 F.3d at 185 (finding that "there is no reason to suppose that motions brought pursuant to § 3582(c)(1)(B) are subject to the restrictions particular to § 3582(c)(2), which are grounded in the text of the latter statute").

While Martin and McDonald concerned a district court's failure to consider arguments and evidence of post-sentencing rehabilitation, nothing limits either decision to that specific context. Petitioner avers that the deicisions should apply equally to any argument that was not available at the time of a defendant's original sentencing. It should not matter whether that argument is based on factual information, such as the post-sentencing rehabilitation evidence at issue

in Martin and McDonald, or a legal development, such as an intervening case, as in United States v. Chambers, 956 F.3d 667 (4th Cir. 2020).

Out of eight cases that the Court of Appeals for the Fourth Circuit has remanded for reconsideration in light of McDonald, one has involved the precise argument as petitioner's case: United States v. Randall, 837 F. App'x 1008 (4th Cir. Mar. 2, 2021), decided three weeks before this case, which made it also be the precedent of the Fourth Circuit Court of Appeals. Mr. Randall appealed after the district court denied his motion for a § 404 reduction based on his criminal history and offense conduct. 837 F. App'x at 1009. In his appeal, Mr. Randall challenged the sufficiency of the court's explanation of its denial of his § 404 motion. Id. at 1008. When applying McDonald to Mr. Randall's case, the Fourth Circuit stated that "the district court's order denying Randall's motion does not explicitly assess any of Randall's arguments or evidence in support of a sentence reduction." Id. at 1009. In particular, the Fourth Cirucit observed that "the district court's order [did] not address Randall's argument[] ... that - after Randall was sentenced - the United States Sentencing Commission issued an August 2016 report to Congress that disapproves of applying the career offender enhancement, see U.S. Sentencing Guidelines Manual § 4B1.1 (2018), to nonviolent drug offenders." Id.

To be sure, in petitioner's case, the district court did address one of his arguments in mitigation, regarding his efforts at rehabilitation. But, critically, the district court did not acknowledge, much less give any consideration to, the same argument that the Fourth Circuit recognized in Randall should have been addressed: the Sentencing Commission's disapproval of the application of the career offender guideline to defendants like petitioner, whose two prior convictions are both for low level, nonviolent drug offenses.

Petitioner's argument about the career offender guideline, however, was every bit as important to his § 404 mitigation argument as his post-sentencing

rehabilitation. Indeed, it was possibly even more important, as it provided a basis for varying downward from the guideline range that the district court acknowledged had not changed from petitioner's original sentencing. See Chambers, 956 F.3d at 674 (holding that "the resentencing court has discretion within the § 404(b) framework to vary from the Guidelines"). Yet the district court made no mention of that argument at all, not even a passing reference like it made to petitioner's rehabilitation argument. As in Randall, the Fourth Circuit should have remanded petitioner's case to the district court to reconsider its decision in light of McDonald, because these cases are the precedent and law of the Fourth Circuit Court of Appeals and are directly on point to petitioner's specific set of facts and argument.

Also, as it did in Randall, in United States v. Brock, which was decided two days after petitioner's case, the Fourth Circuit Court of Appeals vacated the district court's ruling denying the defendant's § 404 motion and remanded the case for reconsideration of the motion in light of McDonald as well as Chambers. 2021 WL 1117015 (4th Cir. Mar. 24, 2021). Like Randall, the Fourth Circuit observed in Brock that the district court's explanation "did not reveal whether the court considered his post-sentencing conduct or his argument that a reduction was appropriate because he was no longer a career offender." Id. at *1.

The Fourth Circuit was/is required to apply McDonald consistently, as well as all rulings of panels of the Fourth Circuit and all its precedent and law. There was no reason to treat petitioner's case any differently from Randall and Brock when in all three, the district courts failed to consider the defendants' arguments concerning their treatment as career offenders. While the district court did consider, at least to some degree, petitioner's argument about rehabilitation, it failed to consider or even acknowledge his argument concerning his career offender classification. Just as the Fourth Circuit did in Randall and again in Brock, the Fourth Circuit should have followed its precedent and vacated the district court's decision and remanded petitioner's case.

The Fourth Circuit Court of Appeals' denial of petitioner's appeal, as well as petitoner's rehearing motion was/is contrary to established precedent and law of the circuit and raises an important question of federal law, i.e., whether the court was/is required to follow precedent of its circuit and equally apply the law of the circuit to all cases of similiarly sitauted defendants in its circuit? Also, whether or not courts must consider post sentencing mitigating factors and evidence when deciding motions filed pursuant to § 3582 and § 404? The impact of this Honorable Court's decision on these questions and these questions themselves impact not only petitioner, but numerous defendants similarly situated who file motions seeking sentence reductions under § 3582(c) and § 404.

"As Supreme Court Rule 10 emphasizes, the court will entertain only 'important matters' or 'important questions of federal law,' Sup. Ct. R. 10(a), (c); see, e.g., Aldinger v. Howard, 427 U.S. 1, 3, 49 L. Ed. 2d 276, 96 S. Ct. 2413.. 427 U.S. 1, 96 S. Ct. 2413, 2415, 49 L. Ed. 2d 276 (1976)(noting that certiorari was granted 'to resolve the conflict on this important question'); Jaffee v. Redmond, 518 U.S. 1, 7-8, 135 L. Ed. 2d 337, 116 S. Ct. 1923 (1996)(noting that certiorari was granted 'because of...the importance of the question')," U.S. Court of Appeals for the Eleventh Circuit, cited at 362 F.3d 739 and decided in 2004.

Based on the foregoing in its entirety petitioner is seeking this Honorable Court's granting of Certiorari and remand to the District Court ordering that Court to follow the precedent of the Fourth Circuit and consider petitioner's argument regarding his career offender status and give "some explanation of its decision on the record and not leave petitioner "in the dark as to the reasons for its decision" as the Fourth Circuit mandates through precedent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vegas D. Smith

Date: 11-8-2021