No. 21-6431

IN THE SUPREME COURT OF THE UNITED STATES

VEGAS D. SMITH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 14-18) that the district court did not adequately explain its decision declining to grant him a discretionary sentence reduction under Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222. The petition for a writ of certiorari should be denied.

1. In 2008, petitioner pleaded guilty to possessing five grams or more of cocaine base (crack cocaine), in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B)(iii) (2006), and possessing a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c) (2006). Judgment 1. The district court sentenced petitioner to 262 months of imprisonment, to be followed

by five years of supervised release. Judgment 2-3. Petitioner did not appeal.

Petitioner later filed a pro se motion under 28 U.S.C. 2255 to vacate his Section 924(c) conviction. D. Ct. Doc. 31, at 2-3 (June 28, 2016). The district court denied the motion and declined to issue a certificate of appealability. D. Ct. Doc. 34, at 2-3 (Nov. 16, 2016). Petitioner did not appeal.

In 2019, petitioner moved for a sentence reduction under Section 404 of the First Step Act. See D. Ct. Doc. 55, at 1 (May 26, 2020) (Order). The district court determined that petitioner was statutorily eligible for such a reduction but declined to reduce his sentence. Order 3-6. The court recognized that, if Section 2 of the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372, had been in effect at the time of petitioner's offense, the statutory penalty range for his Section 841 violation would have been from zero to 20 years (rather than from five to 40 years) of imprisonment. Order 2-3. The court observed, however, that petitioner's advisory Sentencing Guidelines range would have been the same: from 262 months to 327 months, calculated under the career-offender guideline in part on the basis of petitioner's separate Section 924(c) conviction. Order 3.

The district court also "consider[ed] the sentencing factors of 18 U.S.C. § 3553(a)," as "it would for initial sentencing matters." Order 4. The court found that a sentence reduction was not appropriate in light of those factors, emphasizing

petitioner's "extensive criminal record," which the court had characterized at petitioner's sentencing as "'horrendous'" and as possibly "'set[ting] a record'" for defendants before the court. Order 5 (quoting 11/16/07 Sent. Tr. 5). And the court expressly noted that it had taken into account petitioner's "post-sentencing conduct" -- including his "institutional record and his participation in skilled and educational trainings while incarcerated," as well as "supporting documentation" petitioner had attached to a supplemental filing -- and had nonetheless found a sentence reduction unwarranted. Order 5 & n.3; see Order 5-6.

The court of appeals affirmed in an unpublished, per curiam decision. Pet. App. A1-A2. The court "reviewed the record and [found] no reversible error." Id. at A2.

2. Petitioner contends (Pet. 14-18) that the district court abused its discretion by failing to provide an adequate explanation for its decision declining to grant his Section 404 motion. That contention does not warrant further review. The court issued a six-page written order discussing petitioner's eligibility under Section 404(a) and the court's reasons for declining to reduce his sentence under Section 404(b). Order 1-6. Petitioner does not show that more was required under the circumstances. Even at a plenary sentencing proceeding, a district court is not required to pen a lengthy exegesis or to mechanically recite and reject each argument put forward by a defendant. See Rita v. United States, 551 U.S. 338, 357, 359 (2007) (explaining that "[s]ometimes the

circumstances will call for a brief explanation," and that a judge need not "write more extensively" in those cases). And a court's obligations in a sentence-reduction proceeding like this one are, if anything, less exacting. See Chavez-Meza v. United States, 138 S. Ct. 1959, 1963-1968 (2018). Here, the court fully "considered the materials before" it -- including the parties' evidence and arguments concerning petitioner's "offense conduct and prior criminal history, and the § 3553(a) factors" -- and the court reasonably explained why it was declining to grant any reduction. Order 5. No more was required.

3. On September 30, 2021, this Court granted certiorari in Concepcion v. United States, No. 20-1650 (argued Jan. 19, 2022), to address whether a district court considering a Section 404 motion is required to consider any intervening legal and factual developments since the offender's original sentence, other than the amendments made by Sections 2 and 3 of the Fair Sentencing Act. The pro se petition in this case was filed on November 10, 2021. Petitioner does not assert that this case implicates the question at issue in Concepcion, and it does not. It is therefore unnecessary to hold the petition here pending the Court's decision in Concepcion.

In particular, petitioner does not contend that the district court should have considered any additional post-sentencing conduct or changes in law, unrelated to the Fair Sentencing Act, beyond those that the court already expressly considered. See

Order 3 (district court's determination that petitioner's "guideline range remains unchanged" under current law); Order 5 (district court's statement that it had considered petitioner's "post-sentencing conduct"). Petitioner contends (Pet. 11) that the court should have given greater consideration to his argument that the career-offender guideline "set[s] too harsh a range for offenders like him, with two prior drug convictions," particularly in light of a 2016 report by the Sentencing Commission. See Pet. 10, 16-17. But petitioner's policy disagreement with the career-offender guideline as applied to recidivist drug offenders, which could have been raised at the original sentencing, is not an intervening legal or factual development of the sort at issue in Concepcion. The district court also indicated that it would not reduce petitioner's sentence even if his guidelines range were different. See Order 5 n.2. Accordingly, the Court's resolution of the question presented in Concepcion would not affect the result here, and the Court should deny the petition here without awaiting the decision in Concepcion.*

Respectfully submitted.

ELZABETH B. PRELOGAR
Solicitor General

JANUARY 2022

* The government waives any further response to the petition unless this Court requests otherwise.