

No. _____

IN THE
Supreme Court of the United States

HOLLI WRICE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

18 U.S.C. § 3582(c)(1)(A)(i) allows district courts to reduce a defendant's sentence, based on a finding of extraordinary and compelling reasons, after considering 18 U.S.C. § 3553(a) factors. Did Congress intend to allow district courts to grant such reduction, based on the reason that a defendant is serving a sentence for an offense, for which the penalty later was reduced for newly sentenced defendants, where a district court reasonably finds a defendant's particular circumstances render this circumstance extraordinary and compelling, and 18 U.S.C. § 3553(a) factors weigh in favor of such a reduction?

PARTIES TO THE PROCEEDING

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

RELATED PROCEEDINGS

United States v. Wrice, No. 4:10-cr-40065 (S.D.Ill.) (Judgment and conviction of Petitioner for violating 18 U.S.C. § 2113 and 18 U.S.C. § 924(c), issued July 7, 2011).

United States v. Wrice, No. 4:10-cr-40065 (S.D.Ill.) (Final order denying Petitioner's first 18 U.S.C. § 3582(c)(1)(A)(i) motion, issued On June 9, 2020).

United States v. Wrice, 834 Fed.Appx. 267 (7th Cir. 2021) (Seventh Circuit opinion, appeal no. 20-2035, vacating the district court's June 9, 2020 order, and remanding the case for reconsideration in light of *United States v. Gunn*, 980 F.3d 1178 (7th Cir. 2020), issued January 25, 2021).

United States v. Wrice, No. 4:10-cr-40065 (S.D.Ill.) (Final order on remand denying 18 U.S.C. § 3582(c)(1)(A)(i) relief, issued On May 12, 2021).

United States v. Wrice, No. 21-1947 (7th Circuit unpublished Order affirming the district court's May 12, 2021 denial of 18 U.S.C. § 3582(c)(1)(A)(i) relief, issued December 20, 2021, available on the electronic docket for the instant case on the Seventh Circuit's website,

<https://ecf.ca7.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&caseNum=21-1947&incOrigDkt=Y&incDktEntries=Y>, Document number 13).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Holli Wrice respectfully petitions for a writ of certiorari to review the final judgment of the United States Court of Appeals for the Seventh Circuit.

DECISION BELOW

The Seventh Circuit's decision is an unpublished order in *United States v. Wrice*, case no. 21-1947 (7th Cir. Dec. 20, 2021). The Seventh Circuit's decision is unreported and only available on the electronic docket for the instant case on the Seventh Circuit's website, <https://ecf.ca7.uscourts.gov/n/beam/servlet/TransportRoom?servlet=CaseSummary.jsp&caseNum=21-1947&incOrigDkt=Y&incDktEntries=Y>, Document number 13. The decision appears at Appendix 1 to this Petition.

JURISDICTIONAL STATEMENT

The decision of the Seventh Circuit Court of Appeals was entered on December 20, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 403 of the First Step Act, titled "Clarification of Section 924(c) of Title 18, United States Code," states

(a) IN GENERAL.—Section 924(c)(1)(C) of title 18, United States Code, is amended, in the matter preceding clause (i), by striking "second or subsequent conviction under this subsection" and inserting "violation of this subsection that occurs after a prior conviction under this subsection has become final".

(b) APPLICABILITY TO PENDING CASES.—This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.

FIRST STEP ACT OF 2018, PL 115-391, December 21, 2018, 132 Stat 5194.

Section 603 of the First Step Act states, in pertinent part:

(b) Increasing The Use And Transparency Of Compassionate Release.-Section 3582 of title 18, United States Code, is amended-h

(1) in subsection (c)(1)(A), in the matter preceding clause (i), by inserting after “Bureau of Prisons,” the following: “or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier.”

FIRST STEP ACT OF 2018, PL 115-391, December 21, 2018, 132 Stat 5194.

18 U.S.C. § 3582(c) states:

The court may not modify a term of imprisonment once it has been imposed except that--

(1) in any case--

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they

are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C.A. § 3582(c).

18 U.S.C. § 3553(a) states, in relevant part:

(a) Factors to be considered in imposing a sentence.-The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider-

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed-

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for-

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines-

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; ...

(5) any pertinent policy statement-

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

STATEMENT OF THE CASE

Petitioner is serving a 280-month sentence for a 2008 bank robbery, 18 U.S.C. § 2113, and for use of a firearm during a crime of violence, 18 U.S.C. § 924(c). Petitioner committed these offenses in the Southern District of Illinois. A few months before her Illinois offenses, Petitioner committed a robbery in an adjacent district, the Eastern District of Missouri. At the time of her Illinois robbery, Petitioner had not been charged for her Missouri robbery. However, by the time she was sentenced in Illinois, she had been convicted of several counts related to the Missouri robbery, including a violation of 18 U.S.C. § 924(c). At Petitioner's Illinois sentencing, her Missouri § 924(c) conviction triggered an enhanced mandatory minimum penalty of twenty-five years on her § 924(c) count, to be served consecutively, under the law as it was at the time. 18 U.S.C. § 924(c)(1)(C)(i) (West 2017). Other than these two cases, Petitioner has no significant criminal history.

At the end of 2018, the First Step Act amended the penalty for 18 U.S.C. § 924(c)(1)(C)(i), limiting the consecutive mandatory minimum penalty of twenty-five years for defendants convicted of a second 924(c) offense, to instances where “a violation of this subsection [§ 924(c)] occurs after a prior conviction under this subsection has become final.” First Step Act, sec. 403(a), PL 115-391, “Clarification of Section 924(c) of Title 18, United States Code.” Congress declared the amendments “shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.” *Id.* at § 403(b).

On April 14, 2020, Petitioner filed a motion to reduce her sentence pursuant to 18 U.S.C. § 3582(C)(1)(A), known as “compassionate release,” which permits a court to reduce a defendant's sentence based on extraordinary and compelling reasons, after considering 18 U.S.C.

§ 3553(a) factors. Prior to the First Step Act, only the Bureau of Prisons could file for relief for a defendant pursuant to 18 U.S.C. § 3582(C)(1)(A). The First Step Act amended that provision to allow defendants to directly file for such relief in the district court. Public Law 115-391, Sec. 603(b)(1) (“Increasing the Use and Transparency of Compassionate Release.”). Petitioner argued the amendment to the § 924(c) mandatory minimum term was an extraordinary and compelling reason for relief in her case. Petitioner would have been sentenced originally to eighteen years less imprisonment if sentenced under the current law. The sentencing change resulted in tremendous sentencing disparity for similarly situated § 924(c) defendants, sentenced before and after the Act. Petitioner had no significant criminal history prior to her two § 924(c) offenses, and her favorable § 3553(a) factors supported the district court’s exercise of discretion to reduce her sentence.

On June 9, 2020, the district court denied Petitioner’s motion for compassionate release. The district court found Petitioner “would not have received the 25-year mandatory minimum sentence under the current law because the Missouri conviction was not finalized before she committed the Illinois robbery.” (*United States v. Wrice*, no. 4:10-cr-40065, S.D.Ill. June 9, 2020, Doc. 119 p. 2). The district court also found Petitioner’s § 3553(a) factors were favorable: “Since her sentencing, [Petitioner] has done all the right things. She turned her life around and gained the respect of her peers. She took control over her future and keeps making strides to better herself.” *Id.* However, the district court mistakenly held only circumstances listed in the pre-amendment policy statements of the United States Sentencing Guidelines pertinent to compassionate release could serve as extraordinary and compelling reasons for relief: “the Court’s hands are tied.” (Doc. 119, p. 3). In Petitioner’s first appeal, the Seventh Circuit

reversed, holding the pre-amendment policy statements did “not curtail a district judge's discretion.” *United States v. Wrice*, 834 F. App'x 267 (7th Cir. 2021).

On May 12, 2021, after remand, the district court again denied relief, purporting to defer to Congress’ intent, and holding sentencing disparity cannot serve as an extraordinary and compelling basis for relief. (S.D.Ill. no. 4:10-cr-40065, May 12, 2021, Doc. 144 p. 4). Petitioner had also argued her increased risk of severe illness in the event of a Covid 19 infection was an extraordinary reason for relief, which the district court rejected. The Covid 19 issue is not relevant to this Petition for Certiorari, and Petitioner will not discuss the issue further.

On appeal for the second time, the Seventh Circuit Court of Appeals agreed with the district court in an unpublished order dated December 20, 2021. The Seventh Circuit held, “a reason for a sentence reduction under § 3582(c)(1)(A)(i) cannot include, whether alone or in combination with other factors, consideration of the First Step Act's amendment to § 924(c).” *Wrice*, case no. 21-1947 at 2 (citation omitted). The Seventh Circuit relied on its opinion in *United States v. Thacker*, 4 F.4th 569, 576 (7th Cir. 2021), in which it reasoned:

But the discretionary authority conferred by § 3582(c)(1)(A) only goes so far. It cannot be used to effect a sentencing reduction at odds with Congress's express determination embodied in § 403(b) of the First Step Act that the amendment to § 924(c)’s sentencing structure apply only prospectively. To conclude otherwise would allow a federal prisoner to invoke the more general § 3582(c) to upend the clear and precise limitation Congress imposed on the effective date of the First Step Act's amendment to § 924(c).

United States v. Thacker, 4 F.4th 569, 574 (7th Cir. 2021).

The United States District Court for the Southern District of Illinois originally had jurisdiction over Petitioner’s federal criminal case pursuant to 18 U.S.C. § 3231. The district court had jurisdiction over Petitioner’s motion for a reduced sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i).

REASONS FOR GRANTING THE WRIT

Petitioner seeks review of a question of statutory interpretation that has divided the circuits. The question is important to many prisoners sentenced under harsh penalty schemes that have since been amended, and whose particular circumstances support a finding that the updated penalty scheme and resulting sentencing disparity constitutes an “extraordinary and compelling” reason for relief. Petitioner’s case presents an excellent vehicle to resolve this question. Petitioner’s original sentence would have been eighteen years less under the current penalty scheme, and she had no significant criminal history before her two cases that resulted in application of the now amended, twenty-five-year, consecutive penalty. Also, the district court found Petitioner’s 18 U.S.C. § 3553(a) factors support release, a finding not disturbed on appeal. The Seventh Circuit’s affirmance on this issue was based entirely on its legal determination that compassionate release may never be premised in whole or part on a prospective change in the statutory penalty for the defendant’s offense, regardless of a defendant’s particular circumstances and the effect that provision would have if the defendant were sentenced under the current law.

A. Circuit split on a very important issue. In rejecting Petitioner’s argument that the penalty change was an extraordinary and compelling reason for relief under the facts of that case, the Seventh Circuit found the argument was foreclosed by its prior opinion in *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021). In *Thacker*, the Seventh Circuit said, “Federal courts across the country have—and continue to—weigh in on this question, sometimes reaching different conclusions.” *Id.* at 571. In a matter of first impression, the *Thacker* Court then found, “Given Congress’s express decision to make the First Step Act’s change to § 924(c) apply only prospectively, we hold that the amendment, whether considered alone or in connection with other facts and circumstances, cannot constitute an ‘extraordinary and compelling’ reason to

authorize a sentencing reduction.” *Id.* A petition for certiorari in *Thacker* is pending before this Court. *Thacker v. United States*, No. 21-877.

Three Circuits agree with the Seventh Circuit’s view. The Sixth Circuit holds Congress’ intent to apply the § 924(c) changes prospectively would be “thwarted” by allowing the statutory changes to serve as an extraordinary and compelling reason for relief for pre-amendment defendants. *United States v. Jarvis*, 999 F.3d 442, 444 (6th Cir. 2021), *cert. denied*, 142 S. Ct. 760 (2022). Based on the same reasoning, the Third Circuit holds, “The nonretroactive changes to the § 924(c) mandatory minimums . . . cannot be a basis for compassionate release.” *United States v. Andrews*, 12 F.4th 255, 261 (3d Cir. 2021). Similarly, the Eighth Circuit holds, “Congress opted in 2018 to assign a new, less substantial, mandatory punishment for multiple violations of § 924(c) going forward, but it did not declare that the previous Congress—decades earlier—prescribed an inappropriate punishment under the circumstances that confronted that legislative body. * * * The views of a present-day Congress, like those of a present-day sentencing judge, about the appropriate punishment for a present-day offense do not establish an ‘extraordinary and compelling reason’ for reducing a sentence imposed years ago.” *United States v. Crandall*, No. 20-3611, 2022 WL 385920, at *3 (8th Cir. Feb. 9, 2022).

The Fourth and Tenth Circuits take the opposite view. They hold the penalty changes to § 924(c) may serve as an extraordinary and compelling reason for compassionate release. In *United States v. McCoy*, 981 F.3d 271(4th Cir. 2020), the Fourth Circuit explained the § 924(c) penalty change was an extraordinary and compelling reason supporting relief in particular cases, based on the severity of the sentence and extent of disparity compared to those sentenced after the First Step Act, but only when an “individualized assessment” of a particular defendant’s sentence supports such conclusion:

In sum, we find that the district courts permissibly treated as “extraordinary and compelling reasons” for compassionate release the severity of the defendants’ § 924(c) sentences and the extent of the disparity between the defendants’ sentences and those provided for under the First Step Act. We emphasize, as did the district courts, that these judgments were the product of individualized assessments of each defendant's sentence. And we note that in granting compassionate release, the district courts relied not only on the defendants’ § 924(c) sentences but on full consideration of the defendants’ individual circumstances.

United States v. McCoy, 981 F.3d 271, 286 (4th Cir. 2020).

The Fourth Circuit went on to explain, “[t]he fact that Congress chose not to make § 403 of the First Step Act categorically retroactive does not mean that courts may not consider that legislative change in conducting their individualized reviews of motions for compassionate release under § 3582(c)(1)(A)(i).” *Id.* at 286. Rather,

[a]s multiple district courts have explained, there is a significant difference between automatic vacatur and resentencing of an entire class of sentences – with its “avalanche of applications and inevitable resentencings,” *Haynes*, 456 F. Supp. 3d at 516 – and allowing for the provision of individual relief in the most grievous cases. See, e.g., *Redd*, 444 F. Supp. 3d at 720–21; *Maumau*, 2020 WL 806121, at *7; *Jones*, 482 F. Supp. 3d at 980–81 (citing additional cases). Indeed, the very purpose of § 3582(c)(1)(A) is to provide a “safety valve” that allows for sentence reductions when there is not a specific statute that already affords relief but “extraordinary and compelling reasons” nevertheless justify a reduction. *Jones*, 482 F. Supp. 3d at 980–81 (citation omitted). Like the district court in *Bryant*, we see nothing inconsistent about Congress's paired First Step Act judgments: that “not all defendants convicted under § 924(c) should receive new sentences,” but that the courts should be empowered to “relieve some defendants of those sentences on a case-by-case basis.” 2020 WL 2085471, at *3 (*quoting Maumau*, 2020 WL 806121, at *7).

Id. at 286-87.

Similarly, the Tenth Circuit found the § 924(c) penalty changes could serve as extraordinary and compelling reasons for compassionate release relief based on individual circumstances, and that such use did not reflect a judge’s general disagreement with the statutory penalty scheme:

Nothing in the district court's decision indicates that the district court granted relief to Maumau based upon its general disagreement with the mandatory sentences that are required to be imposed in connection with § 924(c) convictions. Nor was the district court's decision based solely upon its disagreement with the length of Maumau's sentence in particular. Rather, the district court's decision indicates that its finding of “extraordinary and compelling reasons” was based on its individualized review of all the circumstances of Maumau's case and its conclusion “that a combination of factors” warranted relief, including: “Maumau's young age at the time of” sentencing; the “incredible” length of his stacked mandatory sentences under § 924(c); the First Step Act's elimination of sentence-stacking under § 924(c); and the fact that Maumau, “if sentenced today, ... would not be subject to such a long term of imprisonment.”⁷ Aplt. App. at 191.

United States v. Maumau, 993 F.3d 821, 837 (10th Cir. 2021).

Hence, district courts in the Fourth and Tenth Circuits have the discretion to shave years off the sentences of otherwise qualifying pre-First Step Act § 924(c) defendants, while district courts in the Third, Sixth, Seventh and Eighth Circuits have no authority to do so for similarly situated defendants. Defendants in circuits with unfavorable case law no doubt perceive the disparate treatment as manifestly unjust. The holding in these circuits is also inconsistent with the discretion granted to district courts by Congress to determine whether a circumstance is extraordinary and compelling in the context of a particular case. It is also contrary one of the fundamental goals of sentencing: to “avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6).

In addition, the issue reaches beyond § 924(c) defendants, to any defendant serving a sentence under a statutory penalty, which was later reduced prospectively, and whose individual circumstances support viewing the penalty change as an extraordinary and compelling reason for compassionate release. It is reasonable to assume defendants in circuits with unfavorable case law will continue to litigate the issue so long as the disparity persists. Therefore, this matter warrants this Court's attention.

B. Petitioner's case presents an excellent vehicle to resolve this issue. Petitioner's case involves no factual disputes. The District Court found Petitioner's 18 U.S.C. § 3553(a) factors were highly favorable, a finding not disturbed on appeal. The Seventh Circuit affirmed based wholly on its legal finding, "a reason for a sentence reduction under § 3582(c)(1)(A)(i) 'cannot include, whether alone or in combination with other factors, consideration of the First Step Act's amendment to § 924(c).'" *Wrice*, No. 21-1947 at *2 (citation omitted).

Conclusion

There is a clear circuit split on whether a prospective change in a criminal penalty may ever serve as an extraordinary and compelling reason for compassionate release. The issue is important, as it will result in profound sentencing disparities for similarly situated defendants who are otherwise good candidates for compassionate release, based only on the happenstance of where they were sentenced. Petitioner's case presents no factual complications, such as unfavorable 18 U.S.C. § 3553(a) factors, which could provide an alternative finding for the District Court's denial of compassionate release. For the foregoing reasons, this Court should grant the petition for a writ of certiorari. Dated: February 24, 2022.

Respectfully submitted,

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