Appendix A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-11299

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTWAN BOYD,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:08-cr-00251-JSM-AAS-1

Before JORDAN, NEWSOM, and GRANT, Circuit Judges.

PER CURIAM:

Antwan Boyd appeals the district court's decision denying in part his motion for a reduced sentence under § 404 of the First Step Act. He argues that the district court abused its discretion by declining to reduce his current 240-month sentence, which he argues is substantively unreasonable, and by failing to provide adequate explanation for its decision. We disagree and affirm.

I.

In 2008, a jury found Boyd guilty of possession with intent to distribute 50 grams or more of cocaine base. At the time, a defendant like Boyd with two or more prior felony drug convictions was subject to a mandatory minimum life sentence for the offense. 21 U.S.C. § 841(b)(1)(A)(iii) (2006). The district court sentenced Boyd to life in prison followed by ten years of supervised release. In 2017, President Obama commuted Boyd's life sentence to 240 months.

Four years later, Boyd filed a motion seeking a further reduction in his sentence pursuant to § 404 of the First Step Act. That statute provides that a district court that sentenced a defendant for a "covered offense" may "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 of 2018 § 404(b), Pub. L. No. 115-391, 132 Stat. 5194, 5222. A "covered

offense" is "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 the effective date of the Fair Sentencing Act. *Id.* § 404(a).

As relevant here, § 2 of the Fair Sentencing Act changed the quantity of crack cocaine necessary to trigger the penalties under 21 U.S.C. § 841(b)(1)(A)(iii) from 50 grams to 280 grams and the quantity of crack cocaine necessary to trigger the penalties under 21 U.S.C. § 841(b)(1)(B)(iii) from 5 grams to 28 grams. Fair Sentencing Act of 2010 § 2(a), Pub. L. No. 111-220, 124 Stat. 2372; *see* 21 U.S.C. § 841(b)(1)(A)(iii), (b)(1)(B)(iii) (2010). After the Fair Sentencing Act, a defendant like Boyd with at least one prior felony drug conviction faced a statutory penalty of ten years to life in prison followed by at least eight years of supervised release for the offense of possession with intent to distribute 50 grams of crack cocaine. 21 U.S.C. § 841(b)(1)(B)(iii) (2010).

Because § 2 of the Fair Sentencing Act modified the statutory penalties for Boyd's offense, the district court found that Boyd had a "covered offense" and was eligible for a sentence reduction under § 404 of the First Step Act. *See United States v. Jones*, 962 F.3d 1290, 1298, 1303 (11th Cir. 2020). The court granted Boyd's motion in part and reduced his term of supervised release from ten years to eight years. The court declined to reduce Boyd's sentence of imprisonment, however, finding that his 240-month sentence remained appropriate. Boyd now appeals.

II.

We review the district court's denial of an eligible movant's request for a reduced sentence under the First Step Act for an abuse of discretion. *Id.* at 1296. The abuse-of-discretion standard allows for "a range of choice for the district court, so long as that choice does not constitute a clear error of judgment." *United States v. Frazier*, 387 F.3d. 1244, 1259 (11th Cir. 2004) (en banc) (quotation marks omitted).

III.

Boyd argues that the district court abused its discretion by declining to reduce his current 240-month sentence of imprisonment based on his rehabilitation in prison and changes to the Sentencing Guidelines implemented since his original sentencing. He also argues that the court failed to provide sufficient explanation for its decision. We do not agree.

First, although the district court was authorized to reduce Boyd's sentence under the First Step Act, it was not required to do so. *Jones*, 962 F.3d at 1304; *see* First Step Act § 404(c) ("Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section."). "District courts have wide latitude to determine whether and how to exercise their discretion in this context." *Jones*, 962 F.3d at 1304. In exercising its discretion, the district court may consider any relevant factor, including the sentencing factors in 18 U.S.C. § 3553(a). *Id.* Contrary to Boyd's argument, however, the district court was not required to consider

or give any particular weight to the specific § 3553(a) factors that Boyd contended were most significant, nor was it required to reduce his sentence based on changes in the law other than those made by the referenced provisions of the Fair Sentencing Act, including postsentencing changes to the career-offender Guidelines that have not been made retroactive. *See United States v. Stevens*, 997 F.3d 1307, 1316 (11th Cir. 2021); *United States v. Taylor*, 982 F.3d 1295, 1302 (11th Cir. 2020).

Based in part on Boyd's career-offender status, his revised Guidelines imprisonment range for purposes of his First Step Act motion was 360 months to life. Considering Boyd's criminal history, the seriousness of his offense conduct—which involved 959 grams of crack cocaine—and the fact that his current sentence is significantly less than his Guidelines range and far below the statutory maximum sentence of life in prison, we cannot say that the district court's determination that the 240-month sentence remained appropriate was "a clear error of judgment." *Frazier*, 387 F.3d. at 1259; *see United States v. Muho*, 978 F.3d 1212, 1227 (11th Cir. 2020) ("sentences that fall within the Guidelines range or that are below the statutory maximum are generally reasonable").

Second, the district court's order, though relatively brief, was sufficient "to allow for meaningful appellate review." *Stevens*, 997 F.3d at 1317. In this context, we require only that the district court provide sufficient explanation to show that it considered the parties' arguments and had a reasoned basis for denying the sentence reduction. *Id.* The court's order here made clear that it had

reviewed the parties' briefs, the probation officer's memorandum, the procedural history of Boyd's charges and convictions, and the presentence investigation report, which detailed Boyd's offense conduct, criminal history, and personal and family information gathered at the time of his original sentencing. The court identified Boyd's adjusted statutory and Guidelines sentencing ranges and indicated that it had considered Boyd's request for a reduced sentence of 188 months. Finally, the court explained that it had considered the § 3553(a) factors and "the nature and seriousness of any danger posed by a reduction" and determined that Boyd's existing 240-month sentence was "sufficient, but not greater than necessary, to punish" Boyd. This explanation was more than adequate to allow us to discern the bases for its decision. *See United States v. Potts*, 997 F.3d 1142, 1146 (11th Cir. 2021); *Stevens*, 997 F.3d at 1317.

IV.

The district court acted within its discretion in denying Boyd's motion for a reduction in his sentence and adequately explained its reasons for doing so. We therefore affirm.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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January 18, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 21-11299-DD
Case Style: USA v. Antwan Boyd
District Court Docket No: 8:08-cr-00251-JSM-AAS-1

Electronic Filing
All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Bradly Wallace

Holland, DD at 404-335-6181.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna H. Clark
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

Appendix B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. Case No: 8:08-cr-251-JSM-AAS

ANTWAN BOYD

ORDER

THIS CAUSE comes before this Court on Defendant's Motion for Reduction Under the First Step Act of 2018 (Doc. 127) The United States opposes the motion (Doc. 130). The Court, having reviewed the motion, the United States' response, and Probation's First Step Act Memorandum (Doc. 126), concludes that the motion for reduction should be granted in part and denied in part.

The defendant was found guilty by a jury on Counts One and Two of the Indictment. Count One charges defendant with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Count Two charges him with possession with intent to distribute 50 grams or more of cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). The jury found that the defendant possessed with intent to distribute 50 grams or more of cocaine base. In the presentence report, the relevant conduct established that on April 1, 2008, the defendant was in possession of 959 grams of crack cocaine. The Court determined the advisory guideline range at the defendant's original sentencing hearing as a total offense level 37, criminal history category VI, an imprisonment range of LIFE, 120 months as to Count One and LIFE in prison as to Count Two, and a supervised release term of 10 years consisting of 3 years as to Count One and 10 years as to Count Two. Due to the §

851 enhancement, the defendant faced a mandatory life sentence. The Court imposed a sentence of LIFE imprisonment, 120 months as to Count One and LIFE imprisonment as to Count Two, both such terms to run concurrently, followed by a 10 year term of supervised release, 3 years as to Count One and 10 years as to Count Two, both such terms to run concurrently. After the Executive Grant of Clemency in 2017 issued by President Obama, defendant's term of imprisonment was reduced to 240 months with the previously imposed supervised release intact.

The Probation Office has determined that Count Two is a covered offense and the corresponding penalty now falls under 21 U.S.C. § 841(b)(1)(B). As a result, defendant's amended guideline range is 360 months to life in prison. Defendant requests that a sentence of 188 months or time served, whichever is greater, would be appropriate in this case.

The defendant's current sentence of 240 months imprisonments falls below the reduced applicable guideline range. While the guideline imprisonment range may have changed with the retroactive application of the Fair Sentencing Act, the Court finds that defendant's 240 month term of imprisonment, is appropriate and will remain the same. The Court, however, will reduce Defendant's term of supervised release to 8 years. The Court has considered the 18 U.S.C. § 3553(1) factors and the nature and seriousness of any danger posed by a reduction, *see* USSG §4B1.1, and determines that this sentence is sufficient, but not greater than necessary, to punish the Defendant.

Therefore:

1. The Court grants in part the defendant's motion as to a reduction in the defendant's term of supervised release as to Count Two only (Doc. 127).

2. The Court denies in part the defendant's motion as to a reduction in the defendant's term of imprisonment. (Doc. 127).

3. The Court reduces the defendant's previously imposed term of supervised release from 10 years to 8 years, comprised of 3 years as to Count One and 8 years as to Count Two, both counts to run concurrently, with all other terms and conditions remaining the same.

DONE and **ORDERED** in Chambers, Tampa, Florida on April 6, 2021.

JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record