ORIGINAL

NO. 21-7471

IN THE SUPREME COURT OF THE UNITED STATES

Jacques H. Telcy
Petitioner,

V.

United States of America,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

In the course of a "New Judgment" under the First Step Act of 2018 (FSA2018) new imposed sentence, what truly excess the reset clock for habeas corpus purposes in a new sentence. The Eleventh Circuit, under the FSA2018 determined that as a matter of legislative grace left to the discretion of the District Court to resentence does not allow the District Court to consider "extraneous resentencing issues". But this plays a critical role at sentencing, which directly formats the plate form of that sentence. Judgments that are newly entered should be firmly viewed on the procedural foundation to which they were truly built on to determine if that sentence was modified or anew.

The facts of this case show the broad authority given to the District Court at resentencing and displays the [wide] range a Court has when resentencing under the FSA2018. The Eleventh Circuit determined that the FSA2018 was a limited sentence under 18 U.S.C §3582(c)(2), which defeats the purpose on which Congress enacted…to "impose a reduced sentence".

The question presented here is whether a resentencing under the FSA2018 qualifies as a new judgment for the purpose of Magwood V. Patterson.

And whether the FSA2018 is a self-contained and self-executing provision that independently grants District Courts authority to impose reduced sentences, such that a defendant can proceed under the Act directly, without resort to 18 U.S.C. §3582(c).

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PETITION FOR WRIT OF CERTIORARI

Jacques H. Telcy, a federal prisoner[1], respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit Court in the matter of United States V. Jacques Hernes Telcy (case # 19-13029, December 10, 2021), which affirmed the judgment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment of the United States District Court of the Southern District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and part III of the rules of the Supreme Court of the United States. The decision of the Court of appeals was entered on December 10, 2021. This petition is timely filed pursuant to Sup.Ct.R.13.3.[2] The District Court had jurisdiction because petitioner was charged Violating federal laws. The Court of Appeals had jurisdiction pursuant to 28 U.S.C. §1291 and 18 U.S.C. §3742, which provide that Courts of Appeals shall have jurisdiction over all final decisions of United States District Courts.

1/ Telcy, proceeding in pro se capacity.

2/ En Banc ruling is contained in Appendix (C-1).

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED:

28 U.S.C.S. §2244(b).

18 U.S.C.S. §3582(c). Modification of an imposed term of imprisonment.

Fair Sentencing Act of 2010 (FSA2010) (Public Law 111-220; 124 Stat. 2372).

First Step Act of 2018 (FSA2018), 132 Stat. at 5222, provides in relevant part:

(b) DEFENDANTS PREVIOUSLY SENTENCED. – A Court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of Bureau of Prisons, the attorney for the government, or the Court, impose a reduce sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

STATEMENT OF THE CASE

This case involves a key distinction between the Fair Sentencing Act of 2010 (FSA2010) and the First Step Act of 2018 (FSA2018) sentencing authority. District Courts throughout the States have placed these similar views at sentencing temping to analyze the FSA2018 through the same lens passed through the narrow gateway of 18 U.S.C §3582(c). But Congress explicitly authorized courts to impose...reduced sentences, not modification of an impose term of imprisonment. The Eleventh Circuit failed to notice a key distinction in Telcy's sentence dealing with his due-process rights under the FSA2018. Here, the District Court did not

hold an evidentiary hearing, which it could have given its broad authority. But did revisit/change its previous factual findings, and also discuss/add other Counts for which Telcy was convicted of at resentencing...[3]

Indictment, Trial, Sentence

On October 16, 2008, a federal grand jury in the Southern District of Florida returned a (4)-Count superseding indictment charging Jacques H. Telcy with the following offenses:

Count(1) possession w/intent to distribute 50 grams or more of crack cocaine, in violation of 21 U.S.C. §§ 841 (a)(1) and (b)(1)(A); Count(2) possession w/intent distribute 500 grams or more of powder cocaine, in violation of 21 U.S.C. §§ 841 (a)(1) and (b)(1)(B); Count(3) using and carrying a firearm during and in relation to a drug trafficking crime, in violation of 21 U.S.C. §924(c)(1)(A); and Count(4) possession of a firearm after previously having been convicted of a felony offense, in violation of 18 U.S.C. §§922(g)(1) and 924(e) (DE-44). The government subsequently filed a notice of intent to seek an enhancement of Telcy's sentence pursuant to 18 U.S.C §851, relying on the fact that Telcy had three prior Florida felony drug convictions (DE-51).

Telcy went to trial, after which the jury found him guilty of all Counts of the superseding indictment (DE-74).

Prior to sentencing, the probation officer prepared a Presentence investigation report (PSR) revised on Feb. 10, 2009. The base and offense level were calculated to be 30 (PSR-19,30). The PSR determined that Telcy was an armed career criminal pursuant to 18 U.S.C. §924(e).

3/ "The sentencing court in Magwood conducted a full resentencing and reviewed the aggravating evidence afresh." 561 U.S. at 339.

The PSR identified the following prior convictions for a violent or serious drug offense:

- **Conviction on Feb 2, 1996, for possession w/intent to sell/deliver cocaine in Dkt # 95-18480-10A;**
- **Conviction on Aug 23, 1996, for possession w/intent to sell/deliver cocaine in Dkt # 96-11457-10A;**
- **Conviction on Feb 17, 2004, for battery on a law enforcement officer in Dkt # 02-7265-10A. (PSR-25).**

Accordingly, in light of these enhancement, the PSR calculated the offense level at 33 pursuant to §4B1.4(b)(3)(B).

The PSR also determined that Telcy had nine criminal history points and a criminal history category of IV (PSR-44) (citing §4B1.4(c)(3). Telcy's guideline range was 188 to 235 months imprisonment plus a consecutive term of 60 months for carrying a firearm during and in relation to a drug trafficking crime (PSR-80). However, because of the §851 enhancement, Count (1) mandated a term of Life imprisonment pursuant to §5G1.1(b) and §5G1.2(b). On February 17, 2009, the district court sentenced Telcy to a term of Life imprisonment on Count (1), concurrent terms of 235 months as to Counts (2) and (4), and a consecutive term of 60 months as to Count (3) (DE-97,116). On top of the prison sentence, the District Court imposed a total term of 10 years of supervised release and a special assessment of 400$.

Previous Post Trial Litigation

Prior to the filing of the §2255 motion, Telcy sought post - trial relief on several different occasions both in the District Court and in the Eleventh Circuit.

On October 12, 2010, Telcy, filed a pro se §2255 motion accompanied by a memorandum of law in which he challenged both his convictions and sentences. Two days after the filing was docketed, the district court denied the motion and entered a judgment in favor of the government. The district court denied a Certificate of Appealability (COA). (case # 10-cv-61934-WMD).

After timely appealing, Telcy requested the 11th Cir Court to grant a COA, that request was denied by a single judge. Telcy v. United States 11th Cir. Case # 11-1037-13 (May 26, 2011).

On September 30, Telcy filed an unsuccessful application in the 11th Cir for leave to file a successive §2255 motion which was denied. In re Telcy, 11th Cir. Case # 13-14460 (Oct 16, 2013).

On April 1, 2016, Telcy filed another application in the 11th Cir for leave to file a successive §2255 motion under Johnson V. United States, 135 S. Ct 2551 (2015), which was denied. The 11th Circuit concluded that his reliance on Johnson was unavailing because he had a concurrent Life sentence on Court (1), and his total sentence would, therefor, not be impacted by Johnson. That order did not address the merits of Telcy's claim that his Florida conviction of [battery on a law enforcement officer] no longer qualified as a violent felony. In re Telcy. 11th Cir. Case # 16-11461 (April 27, 2016).

First Step Act of 2018 Litigation

On February 8, 2019, Telcy through counsel, filed a motion in the District Court for a sentence reduction pursuant to section § 404 as its own motion of the FSA2018 (DE-135). Telcy requested a "full sentencing hearing" at which time he should be allowed to argue for his entitlement to a sentence reduction in consideration of all the §3553 (a) factors (DE-135).

In support of his request for a resentencing hearing, Telcy noted that the FSA2018:

Broad grant of resentencing authority contains one implied limitation, that the court can not impose a sentence lower than the statutory mandatory minimum applicable under the FSA2010 to defendant's offense of conviction. The PSR attributed just under 70 grams of crack cocaine to Mr. Telcy (PSR-12). Under the FSA2010, that would place Telcy as an individual with a crack offense involving 28 grams or more and with at least one prior felony drug offense. 21 U.S.C. 841(b)(1)(B). That requires the imposition of a mandatory minimum sentence of ten years. The Court previously determined that Mr. Telcy's offense level was 33 with a criminal history category of IV and an advisory range of 188 to 235 months imprisonment (DE-116). The Court imposed a sentence at the high end of the sentencing range of 235 months. However, this Court had to be influenced by the fact that it was sentencing Mr. Telcy to a Life term of imprisonment as to Count (1). In fact, this court was required to take that Life sentence into account in determining the applicable sentence under the sentencing guidelines 18 U.S.C. §§3553(a), (a)(3), (a)(4).

Mr. Telcy now comes before the court with a mandatory minimum sentence of only ten years, half of the guideline sentencing range. He also comes before the court having spent over a decade imprisoned in federal jail. Mr. Telcy should have the opportunity to argue why a lower sentencing guideline properly reflects the factors that this court is required to take into account under the §3553 (a)(1) (DE-135 at 7-8).

The government agree that Telcy was eligible for a sentence reduction under FSA2018 as to his conviction on Count (1), but argued that the district court should reject his request. In the alternative, the government requested a sentence of no less than 235 months as to Court (1), consistent with the sentence imposed on Counts (2) and (4) with 60 months to follow, as to Count (3). The government did not take a position as to Telcy's request for a new sentencing hearing (DE137 at 1-6).

In reply, Telcy contended that the court "has the opportunity to correct a wrong" which it had "no choice" but to originally sentence him to a mandatory Life term on Count (1), that an important factor that drove this Court's sentencing determination including the decision to sentence Mr. Telcy at the high end of the applicable sentencing range. The mandatory Life term, is no longer valid and no longer supported by valid penal consideration. The sentencing package has in essence been completely unraveled and must be reconstructed by this Court via a full resentencing hearing (DE-138 at 3).

New Imposed Reduced Sentence

On February 26, 2019, the District Court entered an order granting Telcy's motion in part. (DE-139). The court reduced his sentence on Count (1) to 235 months, and the term of supervised release to 8 years (DE139). But the court denied Telcy a full resentencing hearing, concluding that "no further reduction would be appropriate "after reviewing the PSR and §3553 factors. In doing so warned Telcy[4] to ("be careful what he asks for because at a full hearing it may have unraveled the sentencing package and imposed a sentence between 235 months and Life in addition to 60 months on Count three.") (DE-140).

On April 29, 2019, Telcy sought lease in the 11th Circuit Court to file a second or successive §2255 motion in order to challenge his ACCA sentence on Johnson grounds in light of the fact that his Life sentence on Count (1) was reduced to 235 months under the FSA2018.

4/ In support of its warning, the district court cited United States V. Hogg, 723 F.3d 730(6th Cir 2013). Its is unclear how, or why, Hogg was germane to Telcy's motion for a sentence reduction or to the district Court's disposition of it.

The Eleventh Circuit panel decision issued on May 29, 2019, agree with Telcy that his guideline range for the crack cocaine offense in Count (1) was grouped with the felon-in-possession offense in Count (4) for guideline purposes and thus he may have suffered adverse collateral consequences if his ACCA sentence was unlawful.

The Eleventh Circuit panel, however, denied Telcy second or successive §2255 motion because it found:

Given this record and our Court's binding precedent, we must conclude Telcy has not made a prima facie claim or showing that he was more likely than not sentenced under the residual clause, and that his Johnson claim fails as a matter of law under Beeman V United States, 781 F.3d 1215 (11th Cir.2017). Accordingly, Telcy cannot make a prima facie showing of the existence of either of the grounds set fourth in 28 U.S.C. §2255(h), and his application for leave to file a second or successive motion is DENIED. In re Telcy, (case# 19-11619) at 10, and is also contained in Appendix (D-1).

Telcy's §2255 Motion

Subsequently, on July 11, 2019, Telcy filed a pro se §2255[5] motion in the District Court, challenging the constitutionality of the newly imposed sentence he received based on the FSA2018 asking the District Court to "grant a full resentencing" in accord with the applicable sentencing

5/ Telcy's §2255 motion raised two issues: (1) that the new sentence under the FSA2018 in Count (1) was illegal do to Johnson claim which was impacted by his ACCA enhancement. (2) Ineffective assistance of counsel for failing to adequately investigate his priors.

guidelines provision as necessary" (DE1, 4). Telcy further contended that his pleading was not a second or successive §2255 motion, as his new sentence constituted a [new judgment] and therefore his motion was a first §2255 challenging the newly imposed sentence (DE1 at 11). Without the benefit of a response from the government or any hearing what so ever, the district court denied Telcy's motion the following day, concluding that it was a second or successive §2255 motion whose filing had not been authorized by the Eleventh Circuit Court of Appeal (DE-5 at 3). Mr. Telcy sought reconsideration of the District Court's dismissal, a motion the District Court denied the following day (DE-8).

Appeal

Mr. Telcy timely appealed to the Eleventh Circuit Court of Appeals (DE-9).

After a round of briefing by a pro se Telcy and the government, the Court appointed counsel and issued a briefing schedule.[6]

Oral argument was scheduled for February 10, 2021, in front of the three Judge panel over zoom.

Telcy's Appeal was Affirmed on December 10, 2021 (A-1).

Telcy also filed a timely Rehearing En banc, which was also denied of February 16, 2022 (C-1).

6/ The 11th Circuit appointed David Oscar Markus. Appendix (E-1).

Reason for Granting this Writ

Congress's purpose for the FSA2010 was not to create this puzzling maze of sentencing reform, but to provide "greater justice" to affect a sentencing scheme that had a racially disparate impact. The sentencing gap that was created came from §3582(c)(2) that permitted defendants to move for a reduced sentence based on retroactive amendments to the sentencing guidelines, "allowing a court to reduce a term of imprisonment".

However, the FSA2018 was passed to fix that gap created by the FSA2010 to give a chance to thousands of people like Telcy who were still serving sentences for offenses involving crack cocaine under the 100 to 1 ruling to petition individually. The FSA2018 was enacted in part to make the FSA2010 retroactive by allowing courts to "impose reduce sentences".

The Eleventh Circuit Affirmed Telcy's sentence by agreeing with the District Court that the FSA2018 was a limited sentencing reduction. But the FSA2018 should not be constrained by §3582(c)(2) because there is no indication that Congress intended a complicated limiting determination. Nor would it be helpful now or in future Acts passed by Congress to be viewed as District Courts throughout the States have done here, using modification provision under §3582(c)(2) which are instead a substitute for amended guideline provision that are subjected to entirely different standards.

THIS COURT SHOULD GRANT CERTIORARI TO ANSWER THE IMPORTANT QUESTION OF WHETHER A RESENTENCING UNDER THE FSA2018 QUALIFIES AS A NEW JUDGMENT FOR THE PURPOSES OF MAGWOOD V. PATTERSON

Federal defendant are generally prohibited from filing second or successive habeas petitions. But there are, however exceptions. One such exception exists where a new judgment is entered. In this case, Mr. Telcy was resentenced under FSA2018 after previously filing a habeas petition, which led to a new judgment. Accordingly, the new sentence and judgment under the FSA2018 fits the exception for filing a new habeas petition. The FSA2018 resulting in a new "judgment," such that a §2255 motion that challenges that new "judgment" would not be considered a second or successive motion. And therefore, authorization from the Eleventh Circuit would not be needed in order for a District Court to consider the merits.

This Court his reaffirmed its recognition in Panetti V. Quarterman, 551 U.S. 930, 943 (2007); that there are exceptions to the rule automatically barring the filing of a second-in-time collateral motion, be it a §2254 or a §2255. In Magwood V. Patterson, 561 U.S. 320 (2010); this Court, referencing in Panetti, wrote that it was "well settled" that phrase second or successive "does not simply refer to all §2254 applications filed second or successively in time".

On Appeal, Mr. Telcy argued that the District Court abused its discretion when it applied an incorrect legal standard. Telcy also argued that his Fifth Amendment Rights to due-process was violated where the District Court failed to apply the proper procedures in making its determination of the constitutionality under the FSA2018.

Armstrong V. United States, 986 F.3d 1345 (11th Cir 2021)
White V. United States, 745 F.3d 834, 836 (7th Cir 2014)
United States V. Jones, 796 F.3d 483, 485 (5th Cir 2015)

Patterson V. Sec'y, Fla. Dept. of Corrections, 849 F.3d 1321, 1326-27 (11th Cir. 2017) (en banc).

The Eleventh Circuit distinction between Telcy's case and Patterson is not correct. Unlike the state Court in Patterson's case which "did not issue a new judgment authorizing Patterson's confinement when it granted his motion to correct his sentence," Id at 1327. The District Court in Telcy's case did enter an order reflecting the new sentence (DE-140). Whatever that document is entitled, the 2019 order is the one that now authorizes the Bureau of Prison to confine Telcy and for how long. A judgment to which the Antiterrorism and Effective Death Penalty Act (AEDPA) refers to is the underlying conviction and most recent sentence that authorizes the petitioner's current detention (28 U.S.C. §2244(b)).

Here, the Eleventh, Seventh, and Fifth Circuit cases contradicts the true spirit with in Magwood Because the type of new judgment imposed in Telcy's case is not meaningful different than the new judgment in Magwood. For example, On February 26, 2019 the District Court reduced Telcy's sentence to 235 months on Count (1), and the term of supervised release to 8 years (DE-139). Telcy was also resentenced for using and carrying of a firearm during and in relation to a drug trafficking crime 18 U.S.C. §924(c) which entirely had nothing to do with the FSA2018 (DE-140). This added sentence started the problem in regards to the changes that effected the guidelines under the ACCA §4B1.4(c)(2) which moved Telcy's category to VI, from category IV causing the guideline range to go up in Count (1) to 235-293 months from the original guideline range of 188-235 months (140). This change resulted in the District Court using §3582(c)(2). This completely shows the broad authority given to the District court at sentencing and displays the [wide] range a Court has when resentencing under the FSA2018. Telcy was sentence just two months after the FSA2018 was passed into law, and at the time the majority of District Courts erred in analyzing the FSA2018 under §3582(c)(2) and corrected that theory of eligibility by using 18 U.S.C. §3582(c)(1)(B).

United States V. Wirsing, 943 F.3d 183 (4th Cir 2019); United States V. Suttion, 962 F.3d 979, 983 (7th Cir 2020). However, this seems logical using §3582(c)(1)(B) in making the FSA2010 fully retroactive, but the FSA2018 states...to impose a reduce sentence-not-modify of an impose term of imprisonment. If a defendant has to pursue the FSA2018 relief through §3582(c)(1)(B), then District Court's authority is limited to "modifying an imposed term of imprisonment"-which does not include supervised release, which the District Court adjusted here in Telcy's case. United States V. Edwards, 997 F.3d 1118 (11th Cir. 2021).

Compare 28 U.S.C. §2255 with section of the FSA2018. §2255 provides that under certain circumstances, the Court shall vacate and set aside the judgment/shall discharge the prisoner/ resentence him/grant a new trial or correct the sentence as it may appear appropriate §2255(b). FSA2018, provides explicit permission to impose a reduced sentence. It is true that §2255 use mandatory language, while the FSA2018 is permissive.

However, Telcy's sentence is similar to sentence under Fed.R.Crim.P.32. Here the District Court granted the FSA2018 in part, but denied an evidentiary hearing which the Court could have granted given its [wide] range of discretion Fed.R.Crim.P.32(i)(4)(A). District Courts throughout the states have conducted hearing under the FSA2018...United States V. Hadley, 2019 U.S. Dist., Lexis 125286 (M.D. Fla 2019), United States V. Boulding, 379 F.Supp. 3d 644-54(N.D. Mich 2019); United States V. Rose, 379 F. Supp 3d 223, 29 (S.D.N.Y. 2019). There was also an amended judgment entered (DE140). Even though the District Court did not notify Telcy of the right to Appeal the new judgment 32(j)(1)(B). A final judgment in a criminal case means sentence, and the sentence is the judgement Burton V. Stewart, 549 U.S. 147, 127 S. Ct 793 (2007).

Telcy also had a totally different sentencing range of 235-293 months with a new history category of VI. 32(c)(1)(A). Clearly, the probation officer had to conduct a new PSR and submit it to the District Court before sentencing as to Count (1) 32(c)(1)(A). Because the District Court added/used §3582(c)(2) to Telcy's FSA2018 motion, all provision dating back to February 17, 2009 had remain the same (DE-140)[7]. Count (2) and (4) was grouped with a guideline range of 33, IV 188-235 months. The new sentence in Count (1) was 235-293 months, with a guideline range of VI 33. Telcy recognized that Magwood V. Paterson supported his position, concluding that because of the new sentence he received led to a new "judgment". As this Court has reasoned in Magwood, habeas applications are defined in relation to the judgment they attack; in other words, they "invalid" (in whole or in part) of the judgment authorizing the prisoner's confinement". Id at 332. Accordingly, "the phrase 'second or successive' must be interpreted with respect to the judgment challenged". Id at 333. And where "there is a new judgment intervening between two habeas petitions, an application challenging the resulting new judgment is not second or successive". Id at 341-42.

THIS COURT SHOULD GRANT CERTIRARI TO RESOLVE THE CIRCUIT AND PANEL SPLIT OF WHETHER THE FSA2018 IS A SELF-CONTAINED AND SELF-EXECUTING PROVISION THAT INDENPENDENTLY GRANTS DISTRICT COURT THE AUTHORITY TO IMPOSE A REDUCE SENTENCES, SUCH THAT A DEFENDANT CAN PROCEED UNDER THE ACT DIRECTLY WITHOUT RESORTING TO 18 U.S.C. §3582(C)(2)

7/ Telcy's §2255(h) motion was denied for this very reason on May 29, 2019, "Telcy has not alleged, much less pointed to anything in the record at the 2009 sentencing because the use of §3582(c)(2) (Appendix D-1).

The Eleventh Circuit determined that the ruling articulated by this Court in Dillion V. United States, 560 U.S. 817, 825 (2010) guided their opinion in affirming Telcy's Appeal. However, Congress intended section §404 of the FSA2018 to give effect to the FSA2010's reform, by authorizing District Courts...to impose a reduce sentence. Given that the FSA2018 was motivated by a belief that individuals prior to 2010 were sentenced under an unduly harsh statutory scheme, it makes sense that Congress

would grant District Courts greater sentencing authority to determine whether and how to reform individual sentences.

The Eleventh Circuit and Appellate Courts throughout have applied these same limited determinations that does not work to impose a reduce sentence that will violate defendant's due-process rights in most cases. This case paints a clear picture of that violation, which has been the mistake of allowing the FSA2018 and future Acts to come to fall under §3582(c).

The FSA2018 should not be covered by §3582(c), a modification of an imposed term of imprisonment. The term "sentence" used in the FSA2018, isn't synonymous with the phrase "term of imprisonment" used in §3582(c). A "term of imprisonment" after all is only one component of a "sentence"-as is a term of supervised release or a fine. Mont V. United States, 139 S. Ct 1826, 1834, 204 L. Ed 2d 94 (2019). ("Supervised release is a form of punishment that Congress prescribes along with a term of imprisonment as part of that same sentence".) To the extent that there's any doubt about that, the structure of title 18 removes it-Chapter 227, titled "Sentence" comprises separate subchapters on "Imprisonment" "Probation" and "Fines".

Until now, retroactive reduction to drug sentences depended upon mechanical alteration to the sentencing guideline that passed through a narrow gateway of 18 U.S.C. §3582(c). see Amendment 706, 750, and 782. That law forbade full resentencing hearing and sentences below the low end of the amended guideline range U.S.S.G. §1B1(b)(2)(A). But the FSA2018 takes a different approach not modeled after the modification of §3582(c), but instead to the bedrock sentencing factors of U.S.C. §3553(a). The FSA2018's plan text establishes this freestanding remedy to impose a reduce sentence as if section 2 and 3 of FSA2010...were in effect at the time the cover offense was committed. The FSA2018 unlike §3582(c)(2)-which speaks purely in terms of a sentence reduction-section §404(b) permits District Courts to impose a sentence on defendants under the retroactively applicable FSA2010 reform. The use of the word "impose" -rather than "modify' or 'reduce,' which might suggest mechanical application of the FSA2010"-is significant. This language confers a "greater authority" than given by §3582(c). The law offers no other limitation on the Court's discretion. To "impose" a sentence means to sentence on a clean slate which was done in Count (1) on February 26, 2019.

The FSA2018 (First) requires District Courts to accurately recalculate the guideline and statutory range for that individual, such as career offenders/ §851 enhancement- Compare Dillion Id at 821(holding that a District Courts may only "substitute the amended guideline range" in §3582(c)(2) proceeding). (Second) requires District Courts to correct the original guideline errors and apply intervening case law made retroactive to the original sentence such as Johnson V. United States, 135 S. Ct 2551 (2015)[8] Compare Dillion Id at 831(holding that District Courts lack the discretion to correct errors unaffected by a guideline amendment).

8/ The 11th Circuit Denied Telcy's second or successive §2255 motion challenging his ACCA sentence on Johnson grounds. (Appendix D-1).

(Third) requires District Courts to consider the §3553(a) factors to determine what sentence is appropriate. Unlike sentence modification proceeding under §3582(c)(2)-which limits the use of §3553(a) factors to determining simple whether to reduce a sentence to within a predetermined range. Compare-Dillion Id at 830. FSA2018 permits Courts to use §3553(a) factors to more comprehensively shape sentencing decision and even depart downward from the new guideline range. Under the FSA2018, Congress did not include any language limiting the sentence imposed or specifying the law apply to the new sentencing. The FSA2018 does not suggest that the normal rules of using the law applicable at the time of sentencing should not apply/ that the Court's discretion on sentencing is limited in some way that it would not be at a normal sentencing. Federal Sentencing statute that use the verb "impose" means a sentence in light of all the relevant factors. 18 U.S.C. §3553(a). Under FSA2018 Courts should determine the sentence impose considering the §3553(a) factors/ the revised statutory range under the FSA2010/ the Sentencing Guideline/ and the defendant's post-sentence conduct.

The FSA2018 tasks District Courts with making a holistic resentencing determination as to whether the original sentence remains appropriate in light of the FSA2010's reform. There is no limitation on the types of character and background information a Court may consider for sentencing purposes. Pepper V. United States, 562 U.S. 476, 131 S. Ct 1229, 179 L. Ed. 2d 196 (2011). Congress could not have been any clearer in directing that no limitation be placed on the information concerning the background, character, and conduct of a defendant that a District Court may receive and consider for the purpose of imposing an appropriate sentence. 18 U.S.C. §3661.

Given that the District Court must decide whether to impose a new sentence, the FSA2018 naturally imports a more typical sentencing analysis than the expressly limited §3582(c)(2) modification proceedings. The fatal flaw in this line of reasoning is that §3582(c)(2) isn't an independent grant of statutory authority for District Court to do anything with a sentence. Rather §3582(c)(2) is a finality-of-sentence that allows the Court to reduce a defendant's previously imposed sentence where a defendant sentencing range have subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. §994(o). Here, the changes by the retroactive application of the FSA2010 was not the result of the Sentencing Commission, but Congress's enactment of the new Statute, the FSA2018. Therefore §3582(c)(2) should not apply.

The panel's opinion under the FSA2018, however, failed to account for a key distinction between the FSA2010 and the FSA2018. The latter "expressly permits" modification of an imposed term of imprisonment. Section 2 of the FSA2010 only modified quantities, it did not say anything about sentencing. Therefore, retroactive modification under the FSA2010 could only be achieved by reference to reductions in the sentencing range made by the "Sentencing Commission" 18U.S.C. §3582(c)(2)

To be sure, Congress granted that authorization in 1984, when it enacted the statute now codified at 18 U.S.C. §3582(c). But just as surly, statute enacted by one Congress cannot bind a later Congress from doing so again Dorsey V. United States, 567 U.S. 260, 274, 132 S. Ct 2321, 183 L. Ed 2d 250 (2012). The FSA2018 is a self-contained and self-executing provision that independently authorizes District Courts to impose reduced sentences in the circumstances specified in the Statute.

Panel and Circuit Split- United States V. Edwards, 997 F.3d 1115, (11th Cir May 13, 2021); United States V. Sutton, 962 F. Ed 979, (7th Cir. 2020) ("the Sutton Court disagreed, it sided with the defendant lawyer and held that FSA2018 is its own procedural vehicle. In so holding, the Seventh Circuit focused less on the textual and structural considerations that we have emphasized- namely, that the FSA2018's language embodies a self-contained and self-executing grant of sentence reduction differences between "sentences" and "term of imprisonment".)

The record is ambiguous as to whether the District Court understood the [wide] latitude in exercising its discretion at resentencing. Telcy's case has numerous factors that exist that shows the [wide] range of discretion used in resentencing Telcy, which created the out come in the panel decision that shows a panel and Circuit split today. The Eleventh Circuit allowed an abuse of discretion to stand that now penalize Telcy for the way the sentence was conducted. Telcy's sentence was not harmless error, because it did not deal with alternative guideline calculation or career offender, but under Statutory penalties under §924(c)/ ACCA guidelines/ and the FSA2010. A Court must explain its sentencing decision adequately enough to allow for meaningful appellate review. Else, it abuses its discretion. Gall United States, 552 U.S. 38, 50-51, 128 S. Ct. 586, 169 L. Ed. 2d 445(2007).

But here, why does not Telcy's sentence line up with Magwood V. Patterson, 561 U.S. 320 (2010) was but for the District Court abuse of discretion by adding §3582(c)(2) to fix a problem it created by adding on another sentence at sentencing. Telcy filed the FSA2018 motion as [its own motion] which should have been viewed on its own.

CONCLUSION

Base upon the foregoing petition, this Honorable Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Dated this 11th day of March, 2022.

Respectfully Submitted,

Jacques H. Telcy #77775-004