

No. 6

21-8118

OCTOBER TERM 2022



IN THE SUPREME COURT OF THE

UNITED STATES; D. C. CIR.

Supreme Court, U.S.
FILED

MAY 27 2022

OFFICE OF THE CLERK

DALE M. NEWMAN

MYRON DEJUAN ORR,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARIM TO
EIGHTH CIRCUIT COURT OF APPEALS;

RECEIVED

JUN - 7 2022

OFFICE OF THE
SUPREME COURT

QUESTIONS PRESENTED

1. Whether the lower courts rulings amount to an abuse of discretion when failing to consider that a disparity in sentencing amounts to an abuse of discretion when considering compatible TITLE 18 U.S.C. 3553(a) factors pursuant to 18 U.S.C. 3582 (c) for purpose of extraordinary and or compelling reasons?
2. WHETHER THE LOWER COURTS RULING CREATE AN SPLIT WITH OTHER CIRCUIT COURTS REGARDING WHAT MAY OR MAY NOT BE CONSIDERED FOR A SENTENCE REDUCTION PURSUANT TO 3582 (c) and Title 18 U.S.C. 3553(a), PURSUANT TO THE FIRST STEP ACT OF 2018

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6. UNITED STATES V. URKEVICH No. 8:03-cr-37, 2019 U.S. DIST. LEXIS 197408 2019 WL 6037391 D. NEB. NOV. 2019)	5,7,

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13. PRITZKER V. YARI 42 F. 3.d. 53 68, (1 st Cir. 1994)	9,



LIST OF PARTIES

**THE PARTIES ARE IDENTIFIED IN THE CAPTION OF THE PETITION
FOR THE WRIT;**

RELATED CASES

N/A

STATUTES AND RULES

21 U.S.C. 841(a)(1)

FIRST STEP ACT 2018

FAIR SENTENCING ACT 2010

18 U.S.C. 3553(a)(6)

18 U.S.C. 3582(c)

END

OPINION BELOW

THE OPINION FROM THE EIGHTH CIRCUIT COURT OF APPEALS AND
THE PETITION FOR A REHEARING AND REHEARING EN BANC ATTACHED
IN THE APPENDIX EXHIBITS A & B

THE OPINIONS FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA ATTACHED IN THE APPENDIX EXHIBITS
C & D.

JURISDICTION

THE DATE ON WHICH THE PETITION TO THE EIGHTH CIRCUIT COURT OF
APPEALS WAS DENIED MARCH 17, 2022 REHEARING
THE APPEAL WAS DENIED ON FEBRUARY 10, 2022



THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C.
1254(1).

Constitutional and statutory provisions

Involved:

FIFTH AMENDMENT:

IN PART; DUE PROCESS OF LAW:

CRV

STATEMENT OF CASE

Petitioner was indicted in the Southern district of Iowa for a statutory

Violation of 21 U.S.C. 841((a)(1). Petitioner pursued a trial by jury, upon

conviction petitioner was initially sentenced to life imprisonment.

Subsequent the initial sentence petitioner sentence was reduced to

thirty (30) years of imprisonment. Petitioner subsequent the reduction

of sentence has sought unsuccessfully a reduction in his sentence

based upon the signing into law The First Step Act of (2018) (herein

after FSA-2018). The request was predicated upon 18 U.S.C. 3553(a)(6)

which permits a defendant to seek relief upon a showing that his

(1)

sentence may have the elements of disparity. The lower courts in deny-

ing petitioner relief based upon inconsistency with the intent and

purpose of the FSA-2018), the factors set forth in 3553(a), and contrary

with other Circuit courts having considered the question put forth

herein. The Supreme Court will grant a Writ of Certiorari where there is

a split in the circuits, a lower court applies an incorrect governing rule

of law that is inconsistent with established precedent of this court.

REASON FOR GRANTING WRIT.....

When a lower court erroneously misapprehends established precedent

those courts abuse their discretion, erroneously misapplies established

(2)

law to facts creating clear/plain error, and deprives a petitioner Due

Process of law, which implicates substantial liberty interest, whereas

a citizen of the United States has suffered an irreparable loss of liberty

when a sentence is imposed which exceeds the sufficiency test. To

often we as a intelligent society have ignored the pains imposed upon

non-violent offenders due to those class of defendants who invoke

their guaranteed rights such a case is presented here. As initially stated

petitioner was sentence to life for a non violent drug offense.

Subsequent that sentence being impose the sentence was reduced to

30 years still a draconian sentence under the circumstances of the case,

(3)

and the fact this type of sentencing practice is mostly found in case

where the defendant has been African-America, non-violent offender,

but invoked their rights to a trial by jury. The lower court in ignoring

the factors as part of the assessment concluded that the FSA-2018, in

combination with Title 18 U.S.C. 3553(a)(6), were not in concert with

the aims and goals of FSA-2018 nor 3553(a)(6). Resulting in an abuse of

discretion. SEE; 3582(c)(1)A), FSA 603(b) Stat. at 5239. SEE FOR SIMILAR

VIEWS; UNITED STATES V. McSwain, (No. 20-2732)(7th Cir. Feb. 11,

(2022) Fair Sentencing Act of 2010; Compare: United States V. Black

(No. 20-2314, (7th Cir. 2021), UNITED STATES V. QUINN, No. 91-cr-00

-608, 2020 U.S. DIST LEXIS 110247, 2020 WL 327536 at *5 (N.D. Cal June

17, 2020) UNITED STATES V. DUNCAN, NO. 3:11-CR-00012, 2020 U.S.

DIST. LEXIS 144753, 2020 WL 4669944, at *5 (M.D. TENN. AUG 12,

2020) UNITED STATES V. DAY, NO. 1:05-CR-460, 2020 U.S. DIST LEXIS

133586 2020 WL 4251803 at *12 (E.D. VA. JULY 23, 2020) UNITED

STATES V. URKEVICH, NO. 8; 03-CR-37, 2019 U.S. DIST. LEXIS 197408

2019, WL 6037391 at D. NEB. NOV. 14, 2019.

ARGUMENT

Petitioner asserts that the lower courts abused its discretion when

Concluding that a sentence reduction does not fall within the scope of

(5)

18 U.S.C. 3582 (c). That the conclusion prohibited the court from considering the necessary steps to assess petitioner's eligibility. The lower courts denial of relief is inconsistent with the intent and purpose of the First Step Act of 2018. As petitioner sentence encompassed a mandatory minimum sentence triggered by an prior conviction for an felony drug offense. While serving the sentence Congress passed the FSA-2018 in December of 2018. SEE; PUB. L. NO. 1215-391, 132 STAT. 5194. The (FSA) reduced certain mandatory minimum penalties including those pursuant to Section 841(b)(1)(A)(B) which allows the petitioner to file a Section 18 U.S.C. 3582 under the doctrine of extra-

ordinary and compelling reasons. Amending the compassionate release

(2022) U.S. APP. LEXIS STATUTE SEE; 18 U.S.C. 3582(c) (1)(A), to allow as

previously asserted petitioner to seek a reduction in his sentence and

or home confinement. The lower court arbitrarily concluded that a

sentence reduction does not meet the criteria based, solely upon the

conclusion a sentence reduction fails to meet the purpose, intent, aims

and goals of the (FSA-2018) SEE; UNITED STATES V. URKEVICH, NO. 8:

03-CR-37, 2019 U.S. DIST LEXIS 197408, WL 6037391 at *1 Neb. 14,

2019). The district courts denial of relief hinged on the point that

petitioner sought relief as a sentence reduction. One of the primary

goals of the (FSA). The lower courts failure to take account of that

intent as put forth by Congress resulted in an abuse of discretion.

Compare: United States V. McCoy, 981 F. 3d. 271, 282 & n. 7 (4th

Cir. 2020); Compare: United States V. Gunn, 980 F. 3d. 1178, 1180

(7th Cir. 2020) United States V. Brooker 976 F. 3d. 228, 235-36 (2d Cir.

(2020). The Eighth Circuit court of appeals when addressing the issue

has landed on a view that is contrary to the expressed intent and

purpose of the (FSA), which has widen the split within the Circuits.

Compare: United States V. Crandall- F. 4th -, 2022 U.S. APP. LEXIS 3526

(8TH Cir. 2022) Compare: United States V. McGee, 982 F. 3d. 1035, 1050

(10th Cir. 2021) United States V. McCoy, 981 F 3d. 271 (4th Cir. 2020)

Congress in legislating the FSA-2018 did not prohibit an reduction in

sentence , the FSA-2018 was specifically design to provide sentence

reduction for that sole purpose. Compare: TRW Inc. V. Andrews, 534

U.S. 19, 28, 122 s. Ct. 441, 151 L. ED. 2d. 339 (2001) Pritzker V. Yari 42 F

3d. 53, 68 (1st Cir. 1994). The lower court abuse it's discretion when

determining that a sentence reduction is categorically prohibited and

denied relief solely upon this determination without considering the

()9)

combination of factors which warrant the requested relief. This court

Is asked to grant the Writ, resolving the split in the circuits, and or in

The alternative remand this matter back to the lower courts to correct

The abuse of discretion.

Conclusion

Petitioner seeks a grant of a Writ of Certiorari on the two grounds

Presented herein for good cause shown;

Dated this 16th day of May 2022.

RESPECTFULLY SUBMITTED,

(10)

