

IN THE SUPREME COURT OF THE UNITED STATES

LARRY MARLOWE CHAMBERS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly determined that the district court adequately explained its decision to grant in part and deny in part petitioner's motion for a discretionary sentence reduction under Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Mich.):

United States v. Chambers, No. 87-cr-80933 (Dec. 9, 1992)

Chambers v. United States, No. 92-cv-74516 (Feb. 25, 1993)

Chambers v. United States, No. 95-cv-71807 (Aug. 14, 1995)

United States v. Chambers, No. 87-cr-80933 (Apr. 16, 2021)

United States Court of Appeals (6th Cir.):

United States v. Chambers, No. 89-1380 (Sept. 10, 1991)

United States v. Chambers, No. 89-1950 (Sept. 10, 1991)

United States v. Chambers, No. 93-1012 (Feb. 4, 1993)

United States v. Chambers, No. 93-1393 (Apr. 5, 1993)

United States v. Chambers, No. 93-1011 (Jan. 19, 1994)

Chambers v. United States, No. 93-1347 (Jan. 19, 1994)

United States v. Chambers, No. 93-2033 (Mar. 2, 1994)

United States v. Chambers, No. 93-2585 (Aug. 25, 1994)

Chambers v. United States, No. 95-1978 (May 13, 1996)

United States v. Chambers, No. 96-1284 (Oct. 21, 1996)

United States v. Chambers, No. 09-2029 (Apr. 7, 2010)

In re Chambers, No. 12-1733 (Oct. 31, 2012)

In re Chambers, No. 14-1093 (Jan. 27, 2014)

In re Chambers, No. 13-2697 (June 18, 2014)

Chambers v. United States, No. 14-2222 (Feb. 2, 2015)

United States v. Chambers, No. 21-1331 (Mar. 2, 2022)

United States v. Chambers, No. 21-1378 (Mar. 2, 2022)

Supreme Court of the United States:

Chambers v. United States, No. 93-8837 (June 13, 1994)

IN THE SUPREME COURT OF THE UNITED STATES

No. 22-5470

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2-17) is not published in the Federal Reporter but is available at 2022 WL 612805. The opinion of the district court (Pet. App. 18-26) is not published in the Federal Supplement but is available at 2021 WL 1422764.

JURISDICTION

The judgment of the court of appeals was entered on March 2, 2022. A petition for rehearing en banc was denied on March 30, 2022 (Pet. App. 1). On June 27, 2022, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari

to and including August 27, 2022. The petition for a writ of certiorari was filed on August 22, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Michigan, petitioner was convicted of possessing 50 grams or more of crack cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1); engaging in a continuing criminal enterprise, in violation of 21 U.S.C. 848(a) (Supp. IV 1987); conspiring to distribute cocaine and cocaine base (crack cocaine), in violation of 21 U.S.C. 841(a)(1) and 846; and possessing a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. 924(c) (Supp. IV 1987). Following a guilty plea, petitioner was also convicted of attempting to evade and defeat taxes, in violation of 26 U.S.C. 7201. Presentence Investigation Report (PSR) ¶¶ 1, 3-7. Petitioner was ultimately sentenced to concurrent life terms of imprisonment on the possession and criminal-enterprise counts; no sentence on the conspiracy count, which was vacated as duplicative; a consecutive five-year term of imprisonment on the firearm count; and a concurrent two-year term on the tax count, all to be followed by five years of supervised release. Pet. App. 3; see 944 F.2d 1253, 1268-1269, 1272; 16 F.3d 1221, 1994 WL 12649, at *1 (Tbl.) (per curiam). The court of appeals affirmed, 1994 WL 12649, at

*2-*4, and this Court denied a petition for a writ of certiorari, 512 U.S. 1210.

Petitioner was subsequently denied relief on several postconviction motions challenging his conviction and sentence. 2015 WL 13928835, at *1-*2; 99 F.3d 1140, 1996 WL 603663, at *1-*2 (Tbl.); 87 F.3d 1315, 1996 WL 254020, at *2 (Tbl.); 19 F.3d 19, 1994 WL 70863, at *1 (Tbl.); 1994 WL 12649, at *4-*5. After the enactment of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, petitioner moved for a sentence reduction under Section 404 of that Act. The district court granted in part and denied in part the motion, reducing petitioner's sentence on the possession-with-intent-to-distribute count from life to 405 months of imprisonment. Pet. App. 18-26. The court of appeals affirmed. Id. at 2-17.

1. "In the 1980s, [petitioner] and his brother ran an extensive and violent drug organization in Detroit. The organization employed hundreds of persons and operated over 200 houses for the sale of crack cocaine." Pet. App. 2. The organization distributed three to five kilograms of crack cocaine per week and "generated narcotics sales of as much as \$200,000 a day." 944 F.2d at 1256; see 1994 WL 12649, at *1. The organization used violence to control and intimidate its members, many of whom were juveniles. Gov't C.A. Br. 2-3. Petitioner was a leader of the organization and personally used violence to further its criminal purposes. Id. at 2. And when he was arrested in 1987,

petitioner had more than 50 grams of crack cocaine and a gun in his immediate possession. Id. at 3; see 944 F.2d at 1267.

A grand jury in the Eastern District of Michigan charged petitioner and 21 co-defendants with various drug-trafficking and tax offenses for their roles in the organization. 944 F.2d at 1256. Before trial, petitioner pleaded guilty to one count of tax evasion, in violation of 26 U.S.C. 7201. PSR ¶ 1. The case proceeded to trial on other counts, and the jury found petitioner guilty of possessing 50 grams or more of crack cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1); engaging in a continuing criminal enterprise, in violation of 21 U.S.C. 848(a) (Supp. IV 1987); conspiring to distribute cocaine and cocaine base (crack cocaine), in violation of 21 U.S.C. 841(a)(1) and 846; and possessing a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. 924(c) (Supp. IV 1987). The district court sentenced petitioner to three concurrent terms of life imprisonment on the drug counts, a two-year concurrent term of imprisonment on the tax count, and a consecutive five-year term of imprisonment on the firearm count. Pet. App. 3, 19.

The court of appeals, while otherwise affirming the convictions and sentences, concluded that petitioner's convictions for conspiring to distribute cocaine and engaging in a continuing criminal enterprise were duplicative, and remanded with instructions to vacate one of those two convictions. 944 F.2d at 1269, 1272; see Lucas v. United States, 503 U.S. 989 (1992) (denial

of codefendant's petition for a writ of certiorari); Billy Joe Chambers v. United States, 502 U.S. 1112 (1992) (same). On remand, the district court vacated petitioner's conspiracy conviction and its corresponding sentence, but reimposed the same sentences on the remaining counts. Pet. App. 19; see 1994 WL 12649, at *1. The court observed that it had "'never seen [such] a criminal history'" and that petitioner had "'chosen to break the laws of society' at every opportunity." 1994 WL 12649, at *1. The court emphasized that petitioner "had committed crimes while on parole or probation from other crimes, and while under instructions not to break the law," and that he had "used juveniles in his illegal enterprise." Ibid. The court of appeals affirmed, id. at *5, and this Court denied further review, 512 U.S. 1210.

After he was resentenced, petitioner filed a motion to vacate, correct, or set aside his conviction under 28 U.S.C. 2255. See 1994 WL 70863, at *1. The district court denied the motion, and the court of appeals affirmed. 1994 WL 12649, at *4-*5. The district court later denied petitioner's motion for a new trial and two further Section 2255 motions, and the court of appeals affirmed in each instance. See 1996 WL 603663, at *1-*2; 1996 WL 254020, at *1-*2; 1994 WL 70863, at *1. The district court also denied petitioner's motion for relief from the judgment under Federal Rule of Civil Procedure 60, and both the district court and the court of appeals denied a certificate of appealability. 2015 WL 13928835, at *1-*2.

2. In 2019, petitioner filed a pro se motion for a reduced sentence under Section 404 of the First Step Act. Pet. App. 4. Section 404 permits a defendant to seek a reduced sentence for a "covered offense," which Section 404(a) defines as "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 (Public Law 111-220; 124 Stat. 2372) that was committed before August 3, 2010." First Step Act § 404(a), 132 Stat. 5222. Petitioner also filed a separate motion for an "extraordinary and compelling" circumstances sentence reduction under 18 U.S.C. 3582(c) (1) (A) (i). Pet. App. 4; see id. at 20.

The government agreed that petitioner's conviction for possessing 50 grams or more of crack cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1), was a "covered offense," but urged the district court to deny any reduction as a matter of discretion. Pet. App. 46-47. At the time of petitioner's offense, Section 841(b)(1)(A) prescribed a statutory penalty range of ten years to life imprisonment for a violation of Section 841(a)(1) involving at least 50 grams of crack cocaine. 21 U.S.C. 841(b)(1)(A)(iii) (Supp. IV 1987); see PSR ¶ 5. Section 2 of the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372, modified the statutory penalties for such a violation, which would now be subject to a penalty range of between five and 40 years of imprisonment. 21 U.S.C. 841(b)(1)(B)(iii); see Terry v. United States, 141 S. Ct. 1858, 1862-1864 (2021).

The district court recognized that petitioner's "possession-with-intent conviction is a covered offense under the First Step Act." Pet. App. 46. The court explained, however, that petitioner's criminal-enterprise conviction "is not a covered offense." Ibid. (emphasis omitted). The court then appointed counsel and invited further briefing on whether to reduce petitioner's sentence for his covered Section 841(a)(1) offense. Id. at 47-48. Petitioner filed a counseled motion for reconsideration, arguing that the district court had authority under Section 404 of the First Step Act to reduce both of his life sentences, even if his criminal-enterprise conviction was not itself a covered offense. D. Ct. Doc. 1634, at 3 (Jan. 28, 2021). Petitioner also filed a renewed motion for an extraordinary-circumstances sentence reduction. Pet. App. 4.

The district court denied both motions. Pet. App. 28-41. The court "decline[d] to revisit" its earlier determination that the First Step Act did not give it discretion to reduce petitioner's life sentence for the noncovered offense of engaging in a continuing criminal enterprise. Id. at 34. The court additionally explained that "even if" the Act gave the court discretion to reduce the criminal-enterprise sentence, the court "would decline to exercise such discretion in this particular case, based upon [petitioner's] record and a consideration of the [18 U.S.C.] 3553(a) factors." Ibid. With respect to petitioner's request for an extraordinary-circumstances reduction, the court

determined that “[t]he nature and circumstances of [petitioner’s] offenses weigh strongly against his release,” observing that petitioner “was a leader of a large-scale criminal organization that operated more than 200 retail ‘crack houses’ * * * through several hundred workers,” and that “[e]ven compared to others” in the organization, petitioner “was ‘more overtly violent.’” Id. at 38 (citations and emphasis omitted).

After further briefing, the district court reduced petitioner’s sentence on the Section 841(a)(1) count from life imprisonment to 405 months pursuant to Section 404. Pet. App. 18-26. The Probation Office had calculated petitioner’s guidelines range for that count, when retroactively taking into account the changes made by the Fair Sentencing Act, to be 324 to 405 months. Id. at 22. The parties agreed with that calculation, and the court adopted it. Ibid.; see id. at 25. The court determined that a sentence reduction to the upper end of the new guidelines range was appropriate, after “having undertaken a renewed consideration of the § 3355(a) factors.” Id. at 25. The court noted petitioner’s “commendable” educational and vocational achievements while serving his sentence and observed that petitioner “has had significant periods of time” without any disciplinary violations in prison. Id. at 26. But the court found that a “lengthy sentence” remained necessary and appropriate, given the “seriousness of the crime” and petitioner’s “extensive criminal history prior to the offenses at issue in this case.” Id. at 25.

3. The court of appeals affirmed in an unpublished opinion. Pet. App. 2-17. The court found it unnecessary to address petitioner's contention that his criminal-enterprise conviction was a covered offense under Section 404 of the First Step Act, or his alternative contention that the district court had discretion under Section 404 to reduce his life sentence for that offense even if it was not covered, because "the district court clearly expressed that it would deny [petitioner] a reduced sentence on his [criminal-enterprise] conviction even if he was eligible" for a sentence reduction on that count. Id. at 5. And the court of appeals found that the district court had "not abuse[d] its discretion" in making that determination and had "sufficiently explained its reasoning." Id. at 6-7.

In the same decision, the court of appeals affirmed the district court's denial of an extraordinary-circumstances sentence reduction. Pet. App. 7-10. The court of appeals rejected petitioner's contention that the district court had "abused its discretion when it denied compassionate release based on the § 3553(a) factors, but then two months later weighed those same § 3553(a) factors and granted [petitioner] a reduced sentence for crack-cocaine distribution," id. at 7, observing that the "context of both motions" was different, id. at 9. The court explained that the district court's reasons for determining that a reduction of the Section 841(a) sentence would be warranted in a context where petitioner would "remain[] incarcerated" on the criminal-

enterprise count did not necessarily translate to the context of his extraordinary-circumstances motion for immediate release based on asserted COVID-19 concerns. Ibid. The court also observed that the Section 3553(a) inquiry was legally different, with the compassionate-release motion requiring the court to consider "the nature and circumstances of all [petitioner's] crimes," and the First Step Act motion focused instead on "the crack-cocaine conviction." Ibid.

Judge Clay dissented. Pet. App. 11-17. He would have "remanded for the limited purpose of allowing the district court to explain" what he perceived to be an "inconsistent application of the § 3553(a) factors." Id. at 17.

ARGUMENT

Petitioner contends (Pet. 11-14) that the court of appeals erred in affirming the district court's decision granting in part and denying in part his motion for a sentence reduction under Section 404 of the First Step Act. But petitioner identifies no error in the district court's decision, let alone any error warranting further review. The unpublished decision below also does not conflict with any decision of this Court or another court of appeals. Petitioner separately contends (Pet. 9-11) that the case should be remanded for reconsideration in light of this Court's decision in Concepcion v. United States, 142 S. Ct. 2389 (2022), which was issued after the court of appeals denied rehearing, see Pet. App. 1. But this case does not implicate the

question at issue in Concepcion, concerning the relevance of post-sentencing legal and factual developments in Section 404 proceedings, and petitioner identifies no sound basis for further proceedings in light of that decision. Accordingly, the petition for a writ of certiorari should be denied.

1. As explained above, the district court reduced petitioner's sentence for possessing 50 grams or more of crack cocaine with intent to distribute from a term of life imprisonment to a term of 405 months -- the upper end of the guidelines range that would have applied to that offense if the statutory changes made by Section 2 of the Fair Sentencing Act had been in effect at the time. Pet. App. 18, 22; see First Step Act § 404(b), 132 Stat. 5222 ("A court that imposed a sentence for a covered offense may, on motion of the defendant, * * * impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act * * * were in effect at the time the covered offense was committed."). Petitioner's challenges to the court of appeals' affirmance of that discretionary decision do not warrant this Court's review.

To the extent that petitioner claims (Pet. 1, 11-15) that he was also entitled to a reduction of his life sentence for the separate crime of engaging in a continuing criminal enterprise, in violation of 21 U.S.C. 848(a) (Supp. IV 1987), the unpublished decision below expressly declined to resolve that issue, because the district court alternatively determined that it would decline to reduce petitioner's life sentence on the criminal-enterprise

count "even if" petitioner were eligible for a sentence reduction on that count, Pet. App. 34; see id. at 5-6.* And to the extent that petitioner contends (Pet. 12-14) that the court of appeals should have remanded "for a clearer explanation" of the district court's Section 404 determination, and that it made factual errors in its resolution of his particular case, those contentions are highly fact-bound and do not warrant this Court's review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."); United States v. Johnston, 268 U.S. 220, 227 (1925) (stating that this Court "do[es] not grant a certiorari to review evidence and discuss specific facts").

* The Fair Sentencing Act did not directly alter the statutory penalties for engaging in a continuing criminal enterprise. In certain circumstances, however, the criminal-enterprise statute prescribes enhanced statutory penalties that depend indirectly on the quantity of crack-cocaine listed in Section 841(b)(1)(B), which the Fair Sentencing Act modified (from 5 grams to 28 grams). See 21 U.S.C. 848(b)(2)(A) (prescribing enhanced penalties for a criminal-enterprise offense that, among other things, "involved at least 300 times the quantity of a substance described in subsection 841(b)(1)(B)"); accord 21 U.S.C. 848(b)(2)(A) (Supp. IV 1987) (same). The government therefore has taken the position in appropriate cases that a criminal-enterprise conviction entered before August 3, 2010, can be a covered offense under Section 404 of the First Step Act if the offender was subject to enhanced penalties for the offense under Section 848(b) that were predicated on the crack cocaine quantities later altered by the Fair Sentencing Act. This is not such a case. The penalties for petitioner's offense were specified by Section 848(a), not Section 848(b). See PSR 2 (identifying the statutory penalty range for petitioner's criminal-enterprise count as "10 years up to life"); 21 U.S.C. 848(a) and (b) (Supp. IV 1987).

Petitioner's contentions are, in any event, incorrect. As the court of appeals recognized, the district court's reasoning was fully apparent from the existing record. The district court "thoroughly analyzed the § 3553(a) factors" and reasonably determined that they "did not warrant a reduced sentence" beyond what the court granted. Pet. App. 6. Among other things, the court considered petitioner's "status as a leader in a large-scale drug organization, violent conduct, extensive and violent criminal history, lack of employment while not in prison, and risk of recidivism." Ibid. The court of appeals, in turn, reviewed the district court's reasoning and found that the district court had "sufficiently explained" its decision and had "not abuse[d] its discretion." Id. at 6-7. Under those circumstances, petitioner fails to show that the court of appeals was obligated to remand for any additional explanation before affirming.

Petitioner argues (Pet. 12-13) that the court of appeals had the "mistaken impression" that he filed a Section 404 motion only after the district court rejected his motion for an extraordinary-circumstances reduction. The court of appeals correctly set forth the sequence of petitioner's filings earlier in its opinion and thus was fully aware of when he made each relevant filing. See Pet. App. 4-5. Petitioner also argues (Pet. 13-14) that the court of appeals failed to appreciate that he was seeking immediate release in both his Section 404 motion and his motion for an extraordinary-circumstances sentence reduction, so that the nature

of the relief requested was not a sound basis for differentiating between the two. But the court of appeals was simply explaining that the district court's reasons why it would reduce a sentence in a context where doing so would not result in immediate release did not compel the district court to also conclude that immediate release was warranted. See Pet. App. 7-9; see also id. at 25-26, 37-39 (district court). Among other differences, the district court appropriately took into account that immediate release would threaten public safety. See id. at 39 (citing petitioner's "'risk for recidivism'" and a need to "protect the public from further crimes") (citation omitted).

2. Petitioner separately requests (Pet. 9-11) that this Court grant the petition, vacate the judgment below, and remand for reconsideration in light of the Court's decision in Concepcion v. United States, supra. That request should be denied.

In Concepcion, the Court explained that a district court adjudicating a motion under Section 404 "may consider other intervening changes" in law or fact, beyond just the changes made by Sections 2 and 3 of the Fair Sentencing Act, in considering both whether to grant a reduced sentence for an eligible covered offense and the extent of any such reduction. 142 S. Ct. at 2396. A district court adjudicating a Section 404 motion cannot "recalculate a movant's benchmark Guidelines range in any way other than to reflect the retroactive application of the Fair Sentencing Act," but after properly calculating that benchmark, it "may then

consider postsentencing conduct or nonretroactive changes in selecting or rejecting an appropriate sentence." Id. at 2402 n.6. The Court emphasized that the First Step Act "does not compel courts to exercise their discretion to reduce any sentence," id. at 2396, but directed that the exercise of such discretion should be informed, to an appropriate extent, by intervening changes of fact or law unrelated to the Fair Sentencing Act that are raised by the parties. See id. at 2404-2405.

Concepcion identified the Sixth Circuit, from which the present petition arises, as one of the jurisdictions that had already held that a sentencing court entertaining a Section 404 motion "may consider" intervening changes of fact and law unrelated to the Fair Sentencing Act. 142 S. Ct. at 2398 n.2 (citing United States v. Maxwell, 991 F.3d 685, 689 (6th Cir. 2021), cert. denied, 142 S. Ct. 2903 (2022)). And the proceedings in this case accord with the approach that Concepcion described. The district court determined the guidelines range that would have applied had the Fair Sentencing Act been in effect at the time of petitioner's offense, Pet. App. 25, and also recognized that it could "consider post-sentencing conduct" in the Section 404 proceeding, id. at 24. The court undertook a "renewed consideration of the § 3553(a) factors," id. at 25, and discussed several post-sentencing developments, including petitioner's disciplinary record in prison, see id. at 25-26. And the court of appeals, in turn, found no abuse of discretion, id. at 5-6, consistent with the principles

of appellate review that this Court later outlined in Concepcion, see 142 S. Ct. at 2404 (explaining that the "broad discretion that the First Step Act affords to district courts * * * counsels in favor of deferential appellate review").

Petitioner nonetheless argues that granting, vacating, and remanding is appropriate in light of this Court's observation in Concepcion that, "when deciding a First Step Act motion, district courts bear the standard obligation to explain their decisions and demonstrate that they considered the parties' arguments." Pet. 10 (quoting Concepcion, 142 S. Ct. at 2404). But Concepcion also made clear that, in Section 404 proceedings, the district court "may, in its discretion, dismiss arguments that it does not find compelling without a detailed explanation"; that the court is not "required to articulate anything more than a brief statement of reasons"; and that the court need not "'expressly rebut each argument' made by the parties." 142 S. Ct. at 2404 (quoting Maxwell, 991 F.3d at 694).

Here, the district court recognized and fully satisfied its obligation to "provide a reasoned explanation sufficiently thorough to permit meaningful appellate review." Pet. App. 24 (citation and ellipsis omitted). In the course of the proceedings, the court issued three reasoned written opinions: one finding that petitioner has a covered offense, Pet. App. 42-48; another declining to reconsider aspects of that initial decision, id. at 32-34; and a third granting a sentence reduction limited to the

covered crack-cocaine offense, id. at 18-26. The court of appeals reviewed those decisions and found that the district court had "sufficiently explained its reasoning." Id. at 6. Petitioner identifies no reason to conclude that the court of appeals would reach a different result in light of Concepcion.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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