

No. 22-6141

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC L. WADE- PETITIONER

VS.

UNITED STATES OF AMERICA-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
FOURTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Mr. Eric L. Wade #19447-056

FCI-McDowell/ P.O. Box 1009

Welch, W.V. 24801

QUESTION(S) PRESENTED

QUESTION NUMBER ONE:

Whether the district court abused its discretion by failing to comply with Section 404 (c) of the First Step Act of 2018, ensuring a complete review prior to denial and did the district court's 47-word order provide a sufficient explanation for rejecting his request for a reduced sentence, thus, in violation of the U.S. Supreme Court's Ruling in *Concepcion v. United States*, 142 S. Ct. 2389 (2022) ?

QUESTION NUMBER TWO:

Whether the district court misunderstood the scope of its discretion when it denied Petitioner Wade's Section 404 (b) Motion, thus, did this constitute an abuse of discretion in the matter herein ?

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	5
STATEMENT OF THE CASE.....	6
REASONS FOR GRANTING THE WRIT.....	6
CONCLUSION.....	14

INDEX OF APPENDICES

APPENDIX A- Opinion of the U.S. Court of Appeals

APPENDIX B- Opinion of the District Court

APPENDIX C-Wade's Motion for Reduction of Sentence Under the First
Step Act

APPENDIX D-2020 Progress Report from F.B.O.P.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Concepcion v. U.S., 142 S. Ct. 2399 (2022).....	7,10
Houston v. U.S., 142 S. Ct. 2893 (2022).....	10
Harris v. U.S., 142 S. Ct. 2902 (2022).....	10
U.S. v. Venable, 943 F.3d 187, 192-93 (4 th Cir. 2019).....	11
U.S. v. Carter, 564 F.3d 325, 329-30 (4 th Cir. 2009).....	12
Greenlaw v. U.S., 551 U.S. 338, 127 S. Ct. 2456, 2468 (2007)....	12
Gall v. U.S., 552 U.S. 38, 128 S. Ct. 586, 597 (2007).....	12
STATUTES AND RULES	PAGE NUMBER
Supreme Court Rule 10.....	7
OTHER	PAGE NUMBER
Amendment 792.....	9

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from federal courts:

The opinion of the United States court of appeals appears at

Appendix A, to the petition and is

[] reported at _____; or,

[] has been designated for publication but is not yet reported;
or,

[x] is unpublished.

The opinion of the United States district court appears at

Appendix B to the petition and is

[] reported at _____; or,

[] has been designated for publication but is not yet reported;
or,

[x] is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits
appears at Appendix ___ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet
reported; or,
[] is unpublished.

The opinion of the _____ court
appears at Appendix _____ to the petition and is

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 8, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 30, 2022.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) in Application No. ___ A _____.

The jurisdiction of the Court is invoked under 28 U.S.C. 1254 (1).

For cases from **state courts**:

The date in which the highest state court decided my case was _____.

A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____

_____ (date) in Application No. ___ A _____.
The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

	PAGE NUMBER
Section 404 (b) of the First Step Act of 2018.....	5,7,8,9,11
Section 404 (c) of the First Step Act of 2018.....	7,8,9,10
Fair Sentencing Act of 2010.....	8,11
18 U.S.C. 3582 (c).....	8

STATEMENT OF THE CASE

Petitioner Wade, states that on August 09, 2019, represented by Asst. Federal Public Defender Halerie M. Costello he filed his Motion For Reduction of Sentence Under the First Step Act. Mr. Wade specifically requested a Hearing within his Section 404 (b) Motion. Without ordering the Government to respond, however, the district court denied Eric L. Wade's Motion for Reduction of Sentence by issuing an AO 247 Order stated 47-words to justify denying Wade's Motion for Reduction in Sentence Under the First Step Act. A timely Notice of Appeal was filed and after full briefing in the Fourth Circuit Court of Appeals, thus, on June 8, 2022, affirmed the district court's decision denying his Motion for Reduction in Sentence. Mr. Wade filed a Motion for Panel Rehearing or Rehearing En Banc, however, the Fourth Circuit denied on August 30, 2022.

Petitioner Wade, asserts that he now petitions this Honorable U.S. Supreme Court to GRANT his Pro Se Petition for a Writ of Certiorari, thus, issue a GVR Decision or any other relief deemed warranted in the case at bar.

REASONS FOR GRANTING THE PETITION

Petitioner Wade, acknowledges that a review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted by this court only for compelling

reasons, see Supreme Court Rule 10.

In the instant case, Petitioner Wade, respectfully request that this Court **GRANT** his pro se Petition for a Writ of Certiorari as to Questions Number One, and Two as relevant to question # 1, Eric L. Wade argues that the district court abused its discretion by failing to comply with the clear mandate of Section 404 (c) of the First Step Act of 2018, thus, by failing to give Petitioner Wade a **complete review** prior to denial and the district court's 47-word order failed to provide a sufficient explanation for rejections his request for a reduced sentence in violation of the U.S. Supreme Court's Ruling in *Concepcion v. United States*, 142 S. Ct. 2389 (2022). Regarding to question # 2, Eric L. Wade argues that the district court abused its discretion by misunderstanding the scope of its discretion when denying Petitioner Wade's Section 404 (b) Motion in which requires a GVR to be granted in the case herein.

QUESTION NUMBER ONE:

Whether the district court abused its discretion by failing to comply with Section 404 (c) of the First Step Act of 2018, ensuring a complete review prior to denial and did the district court's 47-word order provide a sufficient explanation for rejecting his request for a reduced sentence, thus, in violation of the U.S. Supreme Court's Ruling in *Concepcion v. United States*, 142 S. Ct. 2389 (2022) ?

Discussion

On August 09, 2019, Petitioner Wade through Assistant Federal Public Defender Halerie M. Costello filed his Motion for Reduction of Sentence Under the First Step Act. Without ordering the Government to submit a Response Brief, thus, on October 31, 2019, the district court denied his Section 404 (b) Motion for Reduction of Sentence by issuing his Denial Opinion on a standard AO 247 Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. 3582 (c), in which the district court stated as follows: **“Inasmuch as the maximum term of imprisonment available to the court upon revocation for a Class B felony under the Fair Sentencing Act is not more than 3 years imprisonment and the sentence imposed was 24 months, a reduction in the revocation sentence imposed is not appropriate.”**

Within Petitioner Wade’s Motion for Reduction of Sentence Under the First Step Act he specifically requested the matter to be set for hearing and requested a resentencing hearing. Appendix C.

Back in 2000, when Petitioner Wade was originally sentenced for Conspiracy to Possess with Intent to Distribute 50 Grams or More of Cocaine Base he was held accountable for 2.5 Kilograms of Cocaine and 200 grams of Crack Cocaine in which yield a

mandatory Guideline Range of (minus Acceptance of Responsibility) was **140-175** months of imprisonment, thus, the Court imposed a “downward departure” to 132 months of imprisonment, however, considering the Guideline Range after giving Mr. Wade the benefit of Amendment 792, minus two yields a new Guideline Range of **110-137** months of imprisonment minus the (8) eight month commensurate reduction yields a new Guideline Range of **102-129** months of imprisonment. Because Mr. Wade had already completed his term of imprisonment but had violated his term of Supervised Release by committed a new federal crime he Supervised Release was revoked, and he was resentenced for Supervised Release violation to 24 months of imprisonment but significantly here the district court did not consider the impact of his Original Guideline Range for the 2000, federal offense but merely based its decision to deny Eric L. Wade’s Section 404 (b) Motion based upon the impact of the change in Supervised Release maximum and the Guideline Range the Supervised Release violation if the district court would have considered the impact of the Original Guideline Range, it is likely that the district court would have reduced Mr. Wade’s 24-month Supervised Release violation federal sentence (emphasis added).

Petitioner Wade, states that consistent with Section 404 (c)

of the First Step Act of 2018, in which states in relevant part as follows: “if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a **complete review of the motion on the merits.**”

Thus, Petitioner Wade, argues that consistent with Section 404 (c), of the First Step Act of 2018, the district court deprived him of his statutory right to a **COMPLETE REVIEW OF THE MOTION ON THE MERITS** by failing to permit the Government to file a Response Brief and then allowing Wade’s counsel to file a Reply Brief and deciding whether a Hearing was necessary and resentencing warranted as specifically requested by Eric L. Wade, however, the district court’s 47-word Denial on an AO 247 Order Standardized Form failed to provide a sufficient explanation for rejecting his specific contention for a reduced sentence in which for all the reasoning stated above herein violate the U.S. Supreme Court’s Ruling in *Concepcion v. United States*, 597 U.S. ___, 142 S. Ct. 2389 (2022); and as the result of the district court failing to consider his post-rehabilitation efforts and the intervening change in law this Honorable Supreme Court has GRANTED a GVR in the wake of Concepcion, see *Houston v. United States*, 142 S. Ct. 2893 (June 30, 2022); and *Harris v. United States*, 142 S. Ct. 2902 (June 30, 2022).

Question Number Two:

Whether the district court misunderstood the scope of its discretion when it denied Petitioner Wade's Section 404 (b) Motion, thus, did this constitute an abuse of discretion in the matter herein ?

Discussion

Petitioner Wade, asserts that when the district court denied his Motion for Reduction of Sentence Under the First Step Act on October 31, 2019, the law was unsettled as to whether a criminal defendant could in fact benefit from the Section 404 of the First Step Act of 2018, for a Supervised Release violation, thus, the issue was not resolved by the Fourth Circuit Court of Appeals until (20) twenty days after the district court's Denial Order, see United States v. Venable, 943 F.3d 187, 192-93 (4th Cir. 2019).

The Probation Office provided an update to the PSR and noted that Wade's new statutory maximum for revocation of supervised release was reduced to three years, but that Wade's sentence was still within this maximum.

The district court denied Wade's motion, finding that a reduction was not appropriate:

Inasmuch as the maximum term of imprisonment available to the court upon revocation for a Class B felony under the Fair Sentencing Act is not more

than 3 years imprisonment and the sentence imposed was 24 months, a reduction in the revocation sentence imposed is not appropriate.

Petitioner Wade, contends that there is nothing from the record to indicate that the district court thought that it did have authority to reduce his federal sentence. That's the problem. The "record" is 47 words long. The district court's entire analysis as quoted above herein is all the Fourth Circuit had and all this Honorable Supreme Court has to review the district court's denial Order. That is it. And that is not enough for the parties or this U.S. Supreme Court to determine what the district court meant by "appropriate." Appellate and Supreme Court review requires something to review. The Fourth Circuit has held that to review what the district court actually said, and cannot "guess on the district court's rationale" or search for "clues that might explain" the result. *United States v. Carter*, 564 F.3d 325, 329-30 (4th Cir. 2009); *Greenlaw v. United States*, 554 U.S. 237 (2008); *Rita v. United States*, 551 U.S. 338, 127 S. Ct. 2456, 2468 (2007); and *Gall v. United States*, 552 U.S. 38, 128 S. Ct. 586, 597 (2007).

Petitioner Wade, argues that the district court actually said is ambiguous. We do not know if the district court thought that it had discretion or lacked discretion. So, this Honorable

U.S. Supreme Court should GRANT a GVR so the district court can tell us what it meant and apply the proper standard on remand if it did not the first time in the situation herein.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eric L. Wade

Date: 11/12/2022

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ERIC L. WADE- PETITIONER

VS.

UNITED STATES OF AMERICA-RESPONDENT(S)

PROOF OF SERVICE

I, Eric L. Wade, do swear or declare that on this date, Saturday, November 12, 2022, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

U.S. Solicitor General

Department of Justice

950 Pennsylvania Avenue, N.W.

Room 5616

Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 12th, 2022.

Eva L. Wade