

APPENDIX A

FILED: September 7, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7682
(4:00-cr-00042-H-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ERIC LAMONT WADE

Defendant - Appellant

M A N D A T E

The judgment of this court, entered June 8, 2022, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

FILED: August 30, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7682
(4:00-cr-00042-H-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ERIC LAMONT WADE

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Thacker, and Judge Quattlebaum.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: June 8, 2022

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UNITED STATES OF AMERICA

Plaintiff - Appellee

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Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-7682

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC LAMONT WADE,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. Malcolm J. Howard, Senior District Judge. (4:00-cr-00042-H-1)

Submitted: May 31, 2022

Decided: June 8, 2022

Before AGEE, THACKER, and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: G. Alan DuBois, Federal Public Defender, Eric Joseph Brignac, Chief Appellate Attorney, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. G. Norman Acker, III, Acting United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, David A. Bragdon, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eric Lamont Wade appeals the district court's order denying his motion for a sentence reduction pursuant to the First Step Act of 2018, Pub. L. No. 115-391, § 404(b), 132 Stat. 5194, 5222. On appeal, Wade argues that the district court's ruling was ambiguous and may indicate that the court believed that it lacked authority under the First Step Act to grant a sentence reduction. We affirm.

We review de novo the question of whether the district court properly interpreted the First Step Act. *See United States v. Cloud*, 994 F.3d 233, 242 (4th Cir. 2021). We review a district court's decision to grant or deny a sentence reduction under the First Step Act for abuse of discretion. *United States v. Jackson*, 952 F.3d 492, 497, 502 (4th Cir. 2020). The First Step Act authorizes a sentencing court to "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." § 404(b), 132 Stat. at 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], that was committed before August 3, 2010." § 404(a), 132 Stat. at 5222. Even if a defendant is eligible for relief, whether to grant a sentence reduction remains discretionary with the district court. *United States v. Wirsing*, 943 F.3d 175, 180 (4th Cir. 2019); *see* § 404(c), 132 Stat. at 5222 ("Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.").

Wade argues that, at the time the district court ruled on his motion, the law was unsettled as to whether a revocation sentence was considered a "covered offense" for

purposes of the First Step Act. He also asserts that the district court's statement that a sentence reduction was not appropriate was ambiguous and could reflect the court's belief that it lacked authority to reduce the sentence.

Wade's motion for a sentence reduction was denied prior to our decision in *United States v. Venable*, 943 F.3d 187 (4th Cir. 2019), which held that, because a "revocation sentence is part of the penalty for [the] initial offense, [the defendant] is still serving his sentence for a 'covered offense' for purposes of the First Step Act." *Id.* at 194. However, at that time, this court and the Supreme Court had already established that a revocation sentence is part of a defendant's original sentence. *Johnson v. United States*, 529 U.S. 694 (2000); *United States v. Ketter*, 908 F.3d 61, 65 (4th Cir. 2018). In *Venable*, the Government conceded that the district court had authority to reduce a term of imprisonment for a defendant serving a revocation sentence if the defendant was originally sentenced for a "covered offense," but argued that the original sentence for the underlying offense could not be reduced once completed. 943 F.3d at 191. Moreover, the record does not indicate that the district court deemed Wade ineligible for a sentence reduction or misapprehended its authority to reduce Wade's sentence. Rather, the court's explanation shows that it applied the new maximum revocation sentence under the Fair Sentencing Act. The court affirmed that it had considered the motion and the sentencing factors, and the court determined—within its discretion—that the original revocation sentence "remain[ed] appropriate under the Fair Sentencing Act." *United States v. Collington*, 995 F.3d 347, 358 (4th Cir. 2021).

Thus, we conclude that the district court did not misapprehend its authority in denying Wade's motion for a sentence reduction, and we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

United States of America

v.

Eric Lamont Wade

Case No: 4:00-CR-42-1H

USM No: 19447-056

Date of Original Judgment: January 11, 2018

Date of Previous Amended Judgment:

(Use Date of Last Amended Judgment if Any)

Halerie Costello

Defendant's Attorney

ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(1)(B)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(1)(B) for a modification of an imposed term of imprisonment to the extent otherwise expressly permitted by statute and as provided by Section 404 of the First Step Act of 2018, and having considered such motion, and taking into account the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months is reduced to _____.

(Complete Parts I and II of Page 2 when motion is granted)

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.

If the amount of time the defendant has already served exceeds this sentence, the sentence is reduced to a "Time Served" sentence, subject to an additional period of up to ten (10) days for administrative purposes of releasing the defendant.

Except as otherwise provided, all provisions of the judgment(s) dated January 11, 2018, shall remain in effect. **IT IS SO ORDERED.**

Order Date: Dec 31, 2019



Judge's signature

Effective Date: _____
(if different from order date)

Malcolm J. Howard Senior U.S. District Judge
Printed name and title