

22-6602

No. _____

ORIGINAL

FILED

JAN 10 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Matthew C. Eisenmann — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US Court of Appeals for the Eighth Circuit No 22-3271
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Matthew C. Eisenmann 33047-0415
(Your Name)

USP Lewisburg
PO Box 1000

(Address)

Lewisburg, PA 17837
(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Whether the District Court and US Court of Appeals for the Eighth Circuit abused their discretion and committed procedural error by denying Eisenmann's First Step Act motion for Compassionate Release by failing to follow the procedures outlined in *Concepcion v. United States*, 142 S. Ct. 2389, 213 L. Ed. 2d 731 (2022), which instructs Courts ruling on First Step Act motions to explain their decisions and give a brief statement of reasons to demonstrate that they considered the parties arguments in support?

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:

RELATED CASES

Originating Case: U.S. District Court for the Western
District of Missouri - Kansas City (Case No. 4:18-cr-00028-GAF-2)

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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

☒ 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,
☒ is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

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☒ is unpublished.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☐ is unpublished.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

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☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 21, 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: December 27, 2022, and a copy of the order denying rehearing appears at Appendix A.

☐ 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. § 1254(1).

☐ For cases from **state courts**:

The date on 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

First Step Act of 2018, pub L. No. 115-391, 6036), 132 Stat. 5194, 5238

18 U.S.C. 3582 (c)(1)(A), Compassionate release

Concepcion v. United States, 142 S.Ct. 2389, 213 L. Ed. 2d 731 (2022)
(established precedent for all First Step Act motions)

Statement of the Case

On February 21, 2018, the Defendant was indicted for Conspiracy to Distribute Methamphetamine, Conspiracy to Distribute heroin, Distribution of Methamphetamine, Distribution of heroin, drug user in possession of a firearm, and misdemeanor possession of marijuana. Mr. Eisenmann accepted responsibility for his conduct and accepted the Government's plea agreement on December 6, 2018. Pursuant to the terms of the plea agreement, Eisenmann pled Guilty to Conspiracy to Distribute heroin in violation of 21 U.S.C. 841(c)(1), (c)(1)(B), and 846 and all other charges were dismissed.

On July 24, 2019, the District Court sentenced the Petitioner to 132 months imprisonment. No appeal followed.

On July 18, 2022, the Petitioner submitted an Administrative remedy requesting compassionate release to the Warden of USP Lewisburg. In Eisenmann's request, he explained about the death of the caregiver of his minor child, his concern with his elderly father's failing health who is providing temporary care to his daughter, and Covid-19 concerns for himself due to his underlying medical conditions. His request was subsequently denied.

On September 13, 2022, the Petitioner filed his First Step Act Motion for Compassionate Release in the District Court (ECF #216). In Eisenmann's motion, he argued for compassionate release due to the death of the caregiver of his minor child, his concern with his elderly father's health, stated his underlying medical conditions that puts him at risk of severe illness or death from Covid-19, explained his extraordinary post-conviction rehabilitation, and demonstrated how the 3553(a) factors favor his release.

The Government filed a response in opposition of Eisenmann's motion for Compassionate Release on September 28, 2022 (CECF #218) and Eisenmann filed a Reply Brief on October 8, 2022 (CECF #219).

On October 21, 2022, the District Court issued an order denying Eisenmann's motion for Compassionate Release (CECF #220). The Court order never adequately addressed the Arguments Eisenmann presented or provided a statement of reasons demonstrating that all the Arguments he presented were considered. Eisenmann timely filed a Notice of Appeal to the United States Court of Appeals for the Eighth Circuit.

The Eighth Circuit sent Eisenmann a letter dated November 10, 2021 informing the petitioner that his order denying compassionate release would be reviewed and that no briefing schedule would be issued. Eisenmann submitted an Appeal Brief anyway so the Court could see that the District Court didn't follow the procedures set out in conception. However, the Eighth Circuit affirmed the order of the District Court without even reviewing Eisenmann's Appellate Brief. The Eighth Circuit affirmed the District Court's decision on November 21, 2022. Eisenmann's brief was filed on November 22, 2022.

Eisenmann then filed for a petition for rehearing en banc. The petition was denied on December 27, 2022.

Eisenmann ~~now~~ timely files this petition for a writ of Certiorari.

Reasons For Granting the Petition

I. The District Court and Eighth Circuit Court of Appeals abused their discretion and committed procedural error by denying Eisenmann's First Step Act motion for Compassionate Release by failing to follow the procedures outlined in *Concepcion v. United States*, 142 S.Ct. 2389, 213 L.Ed.2d 731 (2022)

In *Concepcion v. United States*, 142 S.Ct. 2389, 213 L.Ed. 731 (2022), the United States Supreme Court established procedures for District Courts when reviewing a First Step Act motion. Four holdings are relevant here. (1) District Courts must consider non-frivolous arguments presented by the parties (2) District Courts are not prohibited from considering evidence of post conviction rehabilitation. (3) The First Step Act allows District Courts to consider non-retroactive changes in the law to reduce a sentence (4) District Courts ruling on First Step Act motions bear the standard obligation to explain their decisions, and must give a brief statement of reasons to demonstrate they considered the parties' arguments.

In the case at hand, the District Court did not follow the procedures set out in *Concepcion* and abused its discretion when it denied Eisenmann's First Step Act motion for Compassionate Release. The Eighth Circuit did not hold the District Court to the standard established in *Concepcion*, because they affirmed the order denying Eisenmann's Compassionate Release without the District Court explaining their decision or demonstrating they considered Eisenmann's argument. The Eighth Circuit also violated Eisenmann's due process rights by not allowing the petitioner's issues to be briefed.

In denying Eisenmann's motion for Compassionate release, the District Court only issued a two sentence order that did not address any of the issues Eisenmann presented to the court. See CECF #220, order denying pro se motion for Compassionate release) This Honorable Court specifically stated in Concepcion that District Courts must consider all non-frivolous Arguments presented by the parties and is obligated to explain their decision by giving a Brief Statement of reasons to demonstrate they considered all the parties Arguments. That did not occur.

In Eisenmann's First Step Act motion for Compassionate Release, he provided the District Court with several extraordinary and compelling reasons which would justify him being Granted Compassionate Release. Eisenmann presented the following issues:

A. Death of Caregiver of Eisenmann's child

On July 12, 2022, the primary caregiver of the Petitioner child, Rachel Fox, passed away as a tragic result of a drug overdose. Because of this, Eisenmann's Daughter, Georgina, is now under the temporary Guardianship of his father, Mr. Gerald Eisenmann.

Mr. Gerald Eisenmann is 70 years old and has a litany of health concerns stemming from a car wreck that nearly took his life. Eisenmann's father is in bad shape and is on numerous medications to keep him alive. The Petitioner fears that the stress of caring for a young child will negatively affect his father and result in deadly consequences. The Petitioner fears his father won't be around much longer and he will

lose his only child to foster care. Mr. Gerald Eisenmann's Guardianship of Georgina is only temporary. Eisenmann's court appointed Attorney in Family Court stated that if the petitioner can be released in the next 18-24 months, he could probably regain custody of Georgina and avoid having her placed in Foster care.

The District Court never addressed this critical issue in its order denying Eisenmann's motion for compassionate release. Because Eisenmann's non-frivolous argument was never addressed and no statement of reasons were provided by the District Court, this case must be remanded back to the District Court and its order vacated.

B. Covid-19 concern

Eisenmann explained that mostly all the District Courts in the country have held that the COVID-19 pandemic constitutes an extraordinary and compelling reason for Compassionate Release. See:
United States v. Tillman, 2020 U.S. Dist. Lexis 115303 (MD Tenn 6-30-20)
United States v. Schneider, 2020 U.S. Dist. Lexis 88548 (C.D. Ill 5-20-20)
United States v. Rouch, 2021 U.S. Dist. Lexis 7915 (Dist. of S.D. 1-15-21)
United States v. Frith, 2021 U.S. Dist. Lexis 18768 (C.D. of Md. 9-30-21)

In Eisenmann's motion for Compassionate Release, he explained how he has a history of Asthma, obesity, mental health issues, drug use, and is a former smoker. Eisenmann provided the District Court with data from the Centers for Disease Control (CDC) which stated that people with his listed conditions are at an increased risk of serious illness or death if they were to become infected with COVID-19. See: <https://www.cdc.gov/coronavirus>

Eisenmann also cited several cases from District Courts who have Granted Compassionate Release to Defendants who have the same underlying medical conditions as him. See: *Bmi. case* United States v. Walker, 2021 U.S. Dist. Lexis 93727 (D. Minn. 5-18-21); United States v. Chambers, 2021 U.S. Dist. Lexis 201634 (S.D. Iowa, 9-10-21); United States v. McIntosh, 2021 U.S. Dist. Lexis 1485 (C.D. Ill., 1-6-21); United States v. Thompson, 2020 U.S. Dist. Lexis 111416 (C.D. Ill. 6-25-20); United States v. Potts, 2020 U.S. Dist. Lexis 170495 (S.D. Fla. 8-14-20) (Social Distancing concerns); United States v. Rodriguez, 2020 WL 4592833 (S.D. Cal. 8-5-20) (Mental Health concern); United States v. Lavy, 2020 WL 3218110 at *5 (D. of Kan. 6-15-20) (Association between major Depressive Disorders and atypical immune response)

The District Court Did not even Address Eisenmann's Covid-19 concerns or address any of the 30 cases he cited that favored compassionate release for people with his underlying conditions. Because the District Court Did not Address Eisenmann's non-frivolous Arguments regarding his risk of severe infection or death if he were to become infected with Covid or provide a statement of reasons demonstrating it considered Eisenmann's Arguments, the order Denying him compassionate release must be vacated and his case remanded.

C. Post-Conviction Rehabilitation

Eisenmann Argued that his substantial rehabilitation during his incarceration constitutes extraordinary and compelling reasons for compassionate release. Eisenmann completed 45, evidence based, recidivism reduction programs. Attached to Eisenmann's motion for compassionate release was a transcript of all the programs he completed while in

Bop custody (See: ECF #216, Exhibits)

The programs Eisenmann completed were designed to reduce recidivism, lower the participants public safety factors, and create a successful reentry back into society. It has been proven that inmates who complete these evidence based programs are no longer a danger to the safety of the public. Program participants have learned the skills necessary to handle stressful situations, regulate emotions, make better decisions, and problem solve effectively so they are no longer at risk of reoffending.

Several District Courts have found the Defendant's rehabilitation to be part of the extraordinary and compelling reasons favoring release. See: *United States v. Brown*, 457 F. Supp. 3d 691, 669 (S.D. Iowa, 2020); *United States v. Santamaria*, 516 F. Supp. 3d 832 (S.D. Iowa, 2-1-21); *United States v. Chan*, 2020 U.S. Dist. Lexis 56232 (U.S. Dist. Ct. Cal., 3-31-20)

This Honorable Court stated in *Concepcion (ID)* "First Step Act Movants have amassed prison records of over a decade. Those records are naturally of interest to Judges authorized by the First Step Act to reduce prison sentences or even to release movants immediately." Eisenmann's prison record of rehabilitation was never considered which caused him to be severely prejudiced. The order denying Eisenmann's motion for compassionate release failed to respond or even acknowledge Eisenmann's substantial rehabilitation. Concepcion expressly established that conduct in prison, good or bad, can be properly considered in a First Step Act motion. Eisenmann meaningfully emphasized his positive record in his motion. By no means was he making a throwaway point. To the contrary,

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he devoted about 2 full pages of his motion highlighting his accomplishments, the 45 program he completed, his employment in prison, and how he hasn't had any incidents involving drugs or violence while incarcerated. Concepcion does not require a detailed explanation in response to these considerations, but this court can not be sure that the District Court considered Eisenmann's arguments when it provided no explanation at all. Accordingly, due to the aforementioned facts, the order denying Eisenmann's compassionate release should be vacated. See: United States v. Newbern, 2022 U.S. App. LEXIS 28348 (7th Cir. 10-12-22)

D. Missing Jail time credit

Eisenmann explained in his motion that he did not receive jail time credit from the time he spent in the federal holding facility. Eisenmann arrived in federal custody on March 9, 2018 and remained in the holding facility until August 12, 2019. Eisenmann was entitled to receive 553 days of jail time credit but never did. The District Court never addressed the issue in its order denying compassionate release. The court had the power to reduce Eisenmann's sentence. No reasons were provided in the order denying Eisenmann's compassionate release why Eisenmann should or should not receive this credit. This case must be remanded. Eisenmann continues to remain prejudiced and harmed.

Eisenmann's Motion for Compassionate Release, Reply Brief, Appellate Brief, and his Appellate Brief for petition for rehearing comprehensively explained all of his extraordinary and compelling reasons for Compassionate Release

and was backed up by his medical records, program completion transcripts, LOC studies, and numerous authority. The District Court and Eighth Circuit, if they followed the procedures outlined in Conception, would not be able to provide any reasons why Eisenmann shouldn't be granted Compassionate Release. Eisenmann proved in his motions that his underlying medical conditions put him at risk of severe illness or death from Covid-19, that he fits the criteria for compassionate release in regards to being the only available caregiver for his daughter, that his rehabilitation was significant and favors his release, and the 3553 (a) factors favor his release as well.

This Honorable Court dealt with an identical situation in *Eatman v. United States*, 142 S.Ct. 2899 (2022). In *Eatman*, the District Court abused its discretion and committed procedural error by not following the procedures established in *Conception*, 142 S.Ct. 2389 when it denied *Eatman's* motion for a sentence reduction under the First Step Act. The Eleventh Circuit Affirmed, but this Honorable Court vacated the judgment and remanded for further proceedings in light of its opinion in *Conception*. This Court stated that the District Court did not consider *Eatman's* non-frivolous arguments and failed to give a brief statement of reasons to demonstrate that they considered the parties' arguments. Because the District Court did not follow the procedures established in *Conception*, *Eisenmann's* case should be remanded for further proceedings just like *Eatman's*. It is of national importance for all First Step Act motions to be decided based on the procedures this

Court established in *Concepcion*. When A District Court imposes a sentence, they must follow the 3553(a) procedure. When A Court considers a First Step Act motion to reduce a sentence or for Compassionate Release, it should be required to follow the procedure outlined in *Concepcion*. It is of National importance that District Courts throughout the Country be consistent and, at a minimum, adequately explain their decisions to allow for meaningful appellate review. *Gall v. United States*, 552 U.S. 38, 50-51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007).

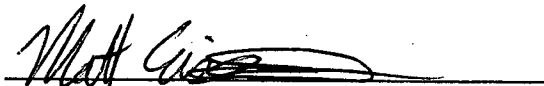
When imposing an initial sentence, the District Court "Should set forth enough to satisfy the appellate court that it has considered the parties Arguments and has a reasoned basis for exercising its own legal decision making authority." *Rita v. United States*, 551 U.S. 338, 350, 127 S.Ct. 2450, 168 L.Ed.2d 203 (2007) see also; *Chavez-Meza v. United States*, 138 S.Ct. 1959, 1965-66, 201 L.Ed.2d 359 (2018) The same Standards Should apply to First Step Act motions for Compassionate release as well.

Wherefore, in the interests of fairness and Justice, for the foregoing reasons, Eisenmann asks that this Honorable Court vacate the District Courts order that denied his motion for Compassionate release and remand this case back to the District Court for further proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: January 10, 2023
Matthew Eisenmann 33047-045
petitioner, pro se
USP Lewisburg
PO Box 1000
Lewisburg, PA 17837

Certificate of Compliance

No.

Matthew C. Eisenmann,
petitioner

v.
United States of America,
Respondent.

As required by Supreme Court Rule 33.1(c), I certify that the petition for a writ of certiorari contains 2763 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(c).

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

Executed on January 10, 2023



Matthew Eisenmann 33047-cv15
petitioner, pro se