APPENDIX

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APPENDIX A

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11257

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BOBBY LEE INGRAM,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia,
D.C. Docket No. 5:94-cr-00002-WTM-BWC-2

Filed 5/17/2023

ON REMAND FROM THE SUPREME COURT OF THE
UNITED STATES

Before GRANT, LUCK, and EDMONDSON, Circuit Judges.

PER CURIAM:

In this appeal, we originally affirmed in part and vacated in part the district court's order denying Bobby Lee Ingram's motion for a sentence reduction under section 404 of the First Step Act 2018. *See United States v. Ingram*, 831 F. App'x 454 (11th Cir. 2020) (unpublished). In pertinent part,[*] we concluded -- based on our decision in *United States v. Jones*, 962 F.3d 1290 (11th Cir. 2020) -- that the district court was bound by its earlier judge-made finding that Ingram was responsible for 4,167 grams of crack cocaine. Given that drug-quantity finding, we concluded that a "sentence of life imprisonment [was] still the lowest possible penalty that would be available to [Ingram] under the Fair Sentencing Act." The district court thus lacked authority to reduce Ingram's sentence for Count 1. *See Ingram*, 831 F. App'x at 458).

The Supreme Court later granted *certiorari*, vacated our decision, and remanded the case to us for additional consideration in the light of its decision in *Concepcion v. United States*, 142 S. Ct. 2389 (2022). *See Ingram v. United States*, 143 S. Ct. 70 (2022).

We have since concluded that the Supreme Court's decision in *Concepcion* did not abrogate the reasoning of our decision in *Jones*, including our determination that "the district court is bound by a previous finding of drug

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[*] Because we found the record ambiguous about whether the district court understood properly the scope of its authority to reduce Ingram's sentence on Count 14, we vacated in part the district court's denial and remanded for further proceedings. That portion of our decision is not at issue now.

quantity that could have been used to determine the movant's statutory penalty at the time of sentence." *See United States v. Jackson*, 58 F.4th 1331, 2023 U.S. App. LEXIS 2772 *1, *8-9 (11th Cir. 2023) (reinstating the Court's prior decision affirming the denial of Jackson's motion to reduce his sentence).

Because our decision in *Jones* remains binding law, we reinstate our prior decision in this appeal.

OPINION REINSTATED; AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

APPENDIX B

SUPREME COURT OF THE UNITED STATES

BOBBY LEE INGRAM,

Petitioner,

v.

UNITED STATES OF AMERICA.

No. 21-1274

October 03, 2022

Case below, 831 Fed.Appx. 454

OPINION

On petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit. Petition for writ of certiorari granted. Judgment vacated, and case remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Concepcion v. United States*, 597 U.S. —, 142 S.Ct. 2389, 213 L.Ed.2d 731 (2022).

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11257
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BOBBY LEE INGRAM,

Defendant-Appellant.

(October 14, 2020)

Attorneys and Law Firms

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Appeal from the United States District Court for the Southern District of Georgia, D.C. Docket No. 5:94-cr-00002-WTM-BWC-2

Before: GRANT, LUCK, and EDMONDSON, Circuit Judges.

OPINION

PER CURIAM:

Bobby Lee Ingram, a federal prisoner now proceeding through appellate counsel,[1] appeals the district court's denial of his motion for a sentence reduction under section 404 of the First Step Act of 2018.[2] Reversible error has been shown; we affirm in part and vacate in part the district court's order and remand for further proceedings.

In 1995, a jury found Ingram guilty of conspiracy to possess with intent to distribute cocaine and crack cocaine,[3] in violation of 21 U.S.C. § 846 (Count 1), and 5 counts of distribution of crack cocaine, in violation of 21 U.S.C. § 841(a)(1) (Counts 6, 8, 9, 10, and 14).

The Presentence Investigation Report ("PSI") calculated Ingram's base offense level as 38. This

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[1] Ingram was pro se when he initiated this appeal and when he filed his opening appellate brief. Ingram later retained a lawyer and filed a counseled reply brief. We construe liberally Ingram's pro se pleadings. See Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

[2] First Step Act of 2018, Pub. L. 115-391, § 404(b), 132 Stat. 5194, 5222.

[3] Although Ingram was charged with an offense involving both powdered and crack cocaine, the sentencing court's drug quantity finding evidences that Ingram was sentenced only for a crack cocaine offense.

determination was based in part on a finding that Ingram was responsible for 4,167 grams of crack cocaine. The PSI also classified Ingram as a career offender. According to the PSI, Ingram was subject to these statutory penalties: (1) a mandatory minimum sentence of life imprisonment for Count 1, pursuant to 21 U.S.C. §§ 841(b)(1)(A) and 851; (2) a maximum sentence of 30 years for Counts 6, 8, 9, and 10, pursuant to sections 841(b)(1)(C) and 851; and (3) a sentence between 10 years and life imprisonment for Count 14, pursuant to sections 841(b)(1)(B) and 851. Based on a total offense level of 38 and a criminal history category of VI, Ingram's advisory guidelines range was calculated as 360 months to life. Because of Ingram's statutory mandatory sentence of life imprisonment, however, the guideline range for Count 1 became life imprisonment under U.S.S.G. § 5G1.1(c)(2).

The district court sentenced Ingram to concurrent sentences of life imprisonment on Count 1 and 360 months' imprisonment on each of the remaining counts. We affirmed Ingram's convictions and sentences on direct appeal. See United States v. Ingram, 100 F.3d 971 (11th Cir. 1996) (unpublished table opinion).

In 2019, Ingram filed pro se a motion to reduce his sentence pursuant to Section 404 of the First Step Act. Ingram requested concurrent sentences of 360 months for Count 1 and 262 months for Counts 6, 8, 9, 10, and 14.[4]

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[4] On appeal, Ingram challenges only the district court's denial of a sentence reduction for Counts 1 and 14 and, thus, has

In March 2019, the district court denied Ingram's motion using a form order. In the "Additional Comments" section, the district court said these words:

> The defendant is not eligible for a sentence reduction pursuant to the First Step Act of 2018. The defendant is serving a mandatory life sentence for committing a federal drug offense involving 280 grams or more of crack cocaine after two prior convictions for a felony drug offense became final.

After the district court denied Ingram relief under the First Step Act -- and while Ingram's appeal was pending -- we issued our decision in United States v. Jones, 962 F.3d 1290 (11th Cir. 2020), in which we addressed the meaning and proper application of section 404 of the First Step Act. Our decision in Jones controls this appeal.

We review de novo whether a district court had the authority to modify a term of imprisonment under the First Step Act. Jones, 962 F.3d at 1296. "We review for abuse of discretion the denial of an eligible movant's request for a reduced sentence under the First Step Act." Id.

The First Step Act "permits district courts to apply retroactively the reduced statutory penalties for crack-cocaine offenses in the Fair Sentencing Act of 2010 to movants sentenced before those penalties

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abandoned his argument that he is eligible for a reduced sentence for Counts 6, 8, 9, and 10.

became effective." Id. at 1293.[5] Under section 404(b) of the First Step Act, "a district court that imposed a sentence for a covered offense [may] 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." Id. at 1297 (quotations and alterations omitted).

To be eligible for a reduction under section 404(b), a movant must have been sentenced for a "covered offense" as defined in section 404(a). Id. at 1298. We have said that a movant has committed a "covered offense" if the movant's offense triggered the higher statutory penalties for crack-cocaine offenses in 21 U.S.C. § 841(b)(1)(A)(iii) or (B) (iii): penalties that were later modified by the Fair Sentencing Act. See id.

In determining whether a movant has a "covered offense" under the First Step Act, the district court "must consult the record, including the movant's charging document, the jury verdict or guilty plea, the sentencing record, and the final judgment." Id. at 1300-01. The pertinent question is whether the movant's conduct satisfied the drug-quantity element in sections 841(b)(1)(A)(iii) (50 grams or more of crack cocaine) or 841(b)(1)(B)(iii) (5 grams or more of crack cocaine) and subjected the movant to the statutory penalties in those subsections. Id. at 1301-02. If so -- and if the offense was committed before 3 August 2010 (the effective date of the Fair Sentencing Act) -- then the movant's offense is a "covered offense," and the

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[5] Fair Sentencing Act of 2010, Pub. L. No. 111-220, §§ 2-3, 124 Stat. 2372, 2372.

district court may reduce the movant's sentence "as if" the applicable provisions of the Fair Sentencing Act "were in effect at the time the covered offense was committed." See First Step Act § 404(b); Jones, 962 F.3d at 1301, 1303. The actual quantity of crack cocaine involved in a movant's offense beyond the amount triggering the statutory penalty is not pertinent to determining whether a movant has a "covered offense." Jones, 962 F.3d at 1301-02.

Here, the PSI provides expressly that Ingram's convictions for Counts 1 and 14 triggered the higher statutory penalties in section 841(b)(1)(A)(iii) and in section 841(b)(1)(B)(iii), respectively. Because Ingram's offenses were committed before 3 August 2010, Ingram's offenses qualify as "covered offenses" under the First Step Act.

That Ingram satisfied the "covered offense" requirement, however, does not necessarily mean the district court was authorized to reduce his sentences for both offenses. We have said that the "as if" qualifier in section 404(b) of the First Step Act imposes two limitations on the district court's authority to reduce a sentence under the First Step Act. See Jones, 962 F.3d at 1303. First, the district court cannot reduce a sentence where the movant "received the lowest statutory penalty that also would be available to him under the Fair Sentencing Act." Id. "Second, in determining what a movant's statutory penalty would be under the Fair Sentencing Act, the district court is bound by a previous finding of drug quantity that could have been used to determine the movant's statutory penalty at the time of sentencing." Id. In other words, a district court lacks the authority to reduce a movant's sentence if the sentence would

necessarily remain the same under the Fair Sentencing Act. See id.

Applying these limitations, the district court did lack authority to reduce Ingram's sentence for Count 1. Based on Ingram's prior felony drug convictions and the sentencing court's finding that Ingram was responsible for 4,167 grams of crack cocaine, Ingram's sentence of life imprisonment is still the lowest possible penalty that would be available to him under the Fair Sentencing Act. See 21 U.S.C. § 841(b)(1)(A)(iii) (2010) (providing a mandatory life sentence for offenses involving 280 grams or more of crack cocaine when a defendant has two prior felony drug convictions); Jones, 962 F.3d at 1304 (affirming the denial of movant Jackson's First Step Act motion because -- based on the sentencing court's drug-quantity finding of 287 grams of crack cocaine and Jackson's prior felony drug convictions -- Jackson was still subject to a life sentence). Contrary to Ingram's argument on appeal, the district court was bound by its earlier drug-quantity finding and was entitled to rely on those judge-found factual findings -- made pre-Apprendi [6] -- that triggered increased statutory penalties. See Jones, 962 F.3d at 1302, 1303-04. Accordingly, we affirm the district court's determination that Ingram was ineligible under the First Step Act for a reduced sentence for Count 1.

The district court, however, did have authority to reduce Ingram's sentence for Count 14. Although the sentencing court made no specific drug-quantity

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[6] Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

finding for Count 14, the sentencing court's application of the statutory penalties in section 841(b)(1)(B) indicates that the amount of crack cocaine attributed to Ingram for Count 14 was between 5 and 49 grams. Applying the statutory penalties in effect under the Fair Sentencing Act, Ingram would be subject either to a statutory minimum sentence of 10 years under section 841(b)(1)(B)(iii) (for drug quantities of at least 28 grams) or to no statutory minimum sentence under section 841(b)(1)(C) (for drug quantities less than 28 grams). Because Ingram's 360-month sentence for Count 14 exceeds the lowest statutory penalty available under the Fair Sentencing Act, Ingram is eligible for a sentence reduction on that count under the First Step Act.

Once a movant is deemed eligible for relief under the First Step Act, the district court still retains "wide latitude" to determine whether and to what extent to grant a sentence reduction. Id. at 1304. In exercising that discretion, district courts may consider "all the relevant factors," including the 18 U.S.C. § 3553(a) sentencing factors. Id.

When the record is ambiguous about whether the district court understood its authority to reduce a sentence under the First Step Act, we will vacate the order and remand for further proceedings. See id. at 1305. Given the language of the district court's order denying Ingram a reduced sentence, it seems to us that the district court based its decision solely on Ingram's mandatory life sentence for Count 1. Because we cannot tell whether the district court understood correctly the scope of its authority under section 404(b) to reduce Ingram's sentence for Count

14, we vacate in part the order denying Ingram's motion for a reduced sentence and remand for further proceedings.

AFFIRMED IN PART, VACATED IN PART, REMANDED.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

UNITED STATES OF AMERICA,

v.

BOBBY LEE INGRAM,

Case No. 5:94-cr-00002-2

USM No: 08909-021

Date of Original Judgment: December 13, 1995
Date of Previous Amended Judgment: Not Applicable
(Use Date of Last Amended Judgment if Any)

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 reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the First Step Act of 2018 pursuant to Pub. L. No. 115-391, and having considered such motion, and taking into account the

policy statement set forth at USSG §1B1.10 and 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)

Except as otherwise provided, all provisions of the judgment dated December 13, 1995, shall remain in effect.

IT IS SO ORDERED.

Order Date: March 28, 2019 /s/
Judge's signature

Effective Date: _____
(if different from order date)

William T. Moore, Jr.
Judge, U.S. District Court
Printed name and title

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11257-HH

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BOBBY LEE INGRAM,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia

Filed: November 18, 2021

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

BEFORE: GRANT, LUCK, and EDMONDSON, Circuit Judges

PER CURIAM:

The petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc

is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

APPENDIX F

EXCERPT OF INDICTMENT

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

UNITED STATES OF AMERICA

v.

HARRY R. MARTIN

BOBBY LEE INGRAM

BENJAMIN F. HOBBS

AKA BENNIE HOBBS

MALCOLM LEE BAILEY

AKA MIKE BAILEY

Indictment No. CR594-2

Filed: Mar. 3, 1994

VIO: 21 U.S.C. § 846
Conspiracy to Possess
with Intent to Distribute
and to Distribute
Controlled Substances

21 U.S.C. § 841(a)(1)

Distribution of Cocaine

18 U.S.C. § 922(g)
Possession of Firearm
by Convicted Felon

21 U.S.C. § 853
Forfeiture

18 U.S.C. § 2
Aiding and Abetting

COUNT ONE

THE GRAND JURY CHARGES THAT:

Beginning on or about January 1, 1992, the exact date being unknown, up to and including the return date of this Indictment, in Charlton County, within the Southern District of Georgia, and elsewhere, the defendants herein:

HARRY R. MARTIN
BOBBY LEE INGRAM
BENJAMIN F. HOBBS
AKA BENNIE HOBBS and
MALCOLM LEE BAILEY
AKA MIKE BAILEY

aided and abetted by each other and by others known and unknown, did knowingly and intentionally combine, conspire, confederate and agree together and with each other, and with others known and unknown, to possess with intent to distribute and to distribute cocaine and cocaine base, schedule II narcotic controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

All of the above done in violation of Title 18, United States Code, Section 2 and Title 21, United States Code, Section 846.

[Remaining counts omitted.]

A TRUE BILL.

_____

FOREMAN

/s/ Karl I Knoche

KARL I. KNOCHE

Assistant United States Attorney

Southern District of Georgia

APPENDIX G

EXCERPT OF JURY INSTRUCTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

UNITED STATES OF AMERICA

vs.

BOBBY LEE INGRAM,

Defendant.

Case No. CR 594-2

Filed: October 3, 1995

COURT'S INSTRUCTIONS
TO THE JURY

MEMBERS OF THE JURY:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your discussions - - what we call your deliberations.

[Irrelevant instructions omitted.]

In summary, count one charges that the defendant knowingly and willfully conspired with others to possess with intent to distribute and to distribute cocaine and cocaine base, the alleged conspiracy being a violation of 21

U.S.C. section 846. Counts six, eight, nine, ten, and fourteen charge the commission of so-called substantive offenses, namely that the defendant, aided and abetted by others known and unknown, did knowingly and intentionally distribute cocaine base, also known as "crack cocaine", in violation of 18 U.S.C. section 2 and 21 U.S.C. section 841(A)(1), on five separate occasions. I will explain the law governing those substantive offenses in a moment.

[Irrelevant instructions omitted.]

Title 21, United States Code, section 841(a)(1), makes it a federal crime or offense for anyone to possess a "controlled substance" with intent to distribute it.

Cocaine base is a "controlled substance" within the meaning of the law.

In order to establish a violation of the statute, the government must prove the following facts beyond a reasonable doubt:

First: that the named defendant distributed cocaine base, or aided and induced another to distribute cocaine base; and

Second: that the defendant did this knowingly and intentionally.

To "distribute" simply means to deliver or transfer possession of a controlled substance to another person, with or without any financial interest in the transaction.

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may also have sole possession or joint possession.

A person who has direct physical control of something on or around his person is then in actual possession of it.

A person who is not in actual possession, but who has both the power and the intention to later take control over

something either alone or together with someone else, is in constructive possession of it.

If one person alone has possession of something, possession is sole. If two or more persons share possession, possession is joint.

Whenever the word "possession" has been used in these instructions it includes actual as well as constructive possession, and also sole as well as joint possession.

[Irrelevant instructions omitted.]

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA

v.

BOBBY LEE INGRAM

VERDICT

Case No. CR594-2

Filed: October 3, 1995

WE, THE JURY, FIND: THE DEFENDANT, BOBBY LEE INGRAM

Guilty as to Count 1.

Guilty as to Count 6.

Guilty as to Count 8.

Guilty as to Count 9.

Guilty as to Count 10.

Guilty as to Count 14.

SO SAY WE ALL.

_____ _____

FOREPERSON'S SIGNATURE DATE