

23-5170
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JUL 12 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Peter R. Jordan — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Peter R. Jordan, #80530-158
(Your Name)

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Coleman, Florida 33521-1032
(City, State, Zip Code)

N/A

(Phone Number)

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QUESTION(S) PRESENTED

Whether Section 404(b) of the First Step Act authorizes the lower courts to impose a reduced aggregate sentence on both covered and non-covered counts in Petitioner's case? Because if so, Petitioner's sentence would not have remained the same on Counts 1, 2, and 3.

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:

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment of the United States Constitution

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21 U.S.C. § 848(e)(1)(A)

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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 B to the petition and is

reported at _____ N/A; 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 is unpublished.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 _____ N/A; 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 is unpublished.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 N/A to the petition and is

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 is unpublished.

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

reported at _____ N/A; 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 March 21, 2023.

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: May 16, 2023, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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 N/A. A copy of that decision appears at Appendix N/A.

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

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

Petitioner was indicted for Title 21 U.S.C. § 848(e)(1)(A), Title 21 U.S.C. § 846, Title 18 U.S.C. § 924(n), and Title 18 U.S.C. § 924(c). Petitioner and a co-defendant proceeded to trial and were convicted and sentenced to life imprisonment. Petitioner exhausted all of his appeal remedies and pursued this Section 404(b), based on the First Step Act, for which he was partially sentenced on only one count, when in fact he should have been resentenced on all counts, according to the First Step Act. Petitioner now pursues this writ of certiorari to the United States Supreme Court for its opinion.

REASONS FOR GRANTING THE PETITION

Petitioner understands that this Honorable Court has discretion to grant and/or accept whichever cases it deems appropriate. However, Petitioner is requesting this Honorable Court to accept his case, because it would verify to all federal courts, that Title 21 U.S.C. § 848(e)(1)(A) is a covered offense, and that with a First Step Act motion when eligible for a First Step Act reduction in sentence, such as in Petitioner's case in point, that he is eligible for a sentence reduction under § 848(e)(1)(A), because it is a covered offense, and/or if he is eligible under the First Step Act, period, that § 848(e)(1)(A) can be reduced as part of Petitioner's sentencing doctrine in his case, based on a resentencing.

In other words, the lower court has the discretion to reduce the Petitioner's sentence as part of the resentencing package doctrine, because he is eligible for such a reduction under the First Step Act and cases cited in this Petition.

Petitioner states the following Argument in this Writ of Certiorari:

ARGUMENT

Whether Section 404(b) of the First Step Act authorizes the lower courts to impose a reduced aggregate sentence on both covered and non-covered counts, because Petitioner's sentence would not have remained the same.

(1) Whether Continuing Criminal Enterprise, Title 21 U.S.C. § 848(e)(1)(A) constitutes "covered offenses" or not under the First Step Act does not matter with respect to Petitioner's eligibility for a reduced sentence under the First Step Act, because the Fair Sentencing Act reduced the mandatory life penalty faced by the Petitioner due to his conviction in violation under 21 U.S.C. § 846, and he otherwise faces a mandatory minimum of only 10 years. However, he was resentenced to 480 months on Count four, based on the First Step Act, and not resentenced at all on the other Counts 1, 2, and 3.

(2) Petitioner needed only to be convicted of one covered offense to qualify for relief under the First Step Act. See Gravatt, 953 F.3d at 264; Winsing, 943 F.3d at

186; United States v. Black, 388 F.Supp. 3d 682, 688 (E.D. Va. 2019); United States v. Spencer, 998 F.3d 843, 845, n.1 (8th Cir. 2021) (noting that a sentence on multiple counts is usually a sentencing package). Therefore, Petitioner was eligible for relief on Count one as well, but did not receive it. See also, Concepcion v. United States, 597 U.S. ___, 142 S. Ct. 2389, 2396 (2022). Petitioner's sentence on Count one, in which was also a life term, could have received a lesser sentence according to the cases cited above. The Petitioner's sentence was reduced based on Count four, for 50 grams or more. However, Count one was therefore eligible for a reduction as well, based on the sentencing package doctrine in this case, and the fact that Title 21 U.S.C. § 848(e)(1)(A), Petitioner's 50 grams or more, is no longer a Title 21 U.S.C. § 841(b)(1)(A)(iii),) → (but a § 841(b)(1)(B)(iii) instead. Therefore, Petitioner was eligible as well for another sentencing reduction on Count one of his sentenced offense. Also, Petitioner's co-defendant who originally received a life term as well, was later resentenced to 20 years of imprisonment. This was a great disparity between the Petitioner's sentence, and his co-defendant's sentence, because Petitioner is still serving a life term on Count one of his charged offense.

(ao)

(3) Petitioner's health, and his age of 72, and 18 years of incarceration with only one disciplinary report, and the fact that he has completed and achieved his G.E.D. and participated in many, many programs and other various activities, and the fact that he has Type II diabetes, and struggled with Shingles, and had tested positive for COVID-19 in 2020, are also extraordinary reasons for a lower sentence on Count one and Count four. Petitioner is truly not a threat to the public to continue to justify his being incarcerated. Petitioner is more so an access to the public. Petitioner is not the same person he was 18 years ago, and he is always striving to better himself and his position in life, as he continues to this day to program and take advantage of the necessary programs available to him so that if released, he will be a more productive member of society. See also, United States v. Hudson, 967 F.3d 605, 611 (7th Cir. 2020); United States v. Spencer, 998 F.3d 843, 845 n.1 (8th Cir. 2021) (Because drug sentence constitutes a "sentencing package," "a modification of the crack cocaine object could permit a sentence reduction on powder cocaine object"); United States v. Winters, 986 F.3d 942, 948-50 (5th Cir. 2021) (conspiracy to distribute crack and powder, each object of which resulted in the same statutory range, constituted a covered offense); United States v. Taylor, 982 F.3d 1295, 1300-01 (11th Cir. 2020) ("holding that the First Step Act's definition of a 'covered offense' covers a multidrug element"); United States

v. Mitchell, 832 F.App'x 387, 390-91 (6th Cir. 2020) (Stranch, J., concurring (stating agreement with holdings in Hudson and Gravatt)); United States v. Flowers, 963 F.3d 492, 497 (6th Cir. 2020); United States v. Trent, 820 F.App'x 223, 224 (4th Cir. 2020); and United States v. White, 984 F.3d 76, 87-88 (D.C. Cir. 2020).

(4) In these cases stated above, the courts held that the defendants were eligible for consideration for a reduced sentence limited only by the "statutory mandatory minimum terms that remained in effect." See also, Pepper v. United States, 562 U.S. 476, 507 (2011) ("A criminal sentence is a package of sanctions that the District Court utilizes to effectuate its sentencing intent."); see also United States v. Smith, 115 F.3d 241, 245 (4th Cir. 1997) ("The term 'sentence' in Section 2255 does not refer to a specific offense, rather, 'sentence' must be viewed in the aggregate."); United States v. Damon, 933 F.3d 269, 273 (3d Cir. 2019) ("The ordinary meaning of 'sentence' can only reasonably be read to include all forms of punishment or penalties imposed on a defendant"); and United States v. Hadden, 475 F.3d 652, 664 (4th Cir. 2007).

(5) If the Petitioner were resentenced today, he would have no longer faced a mandatory life term of imprisonment, contrary to what the lower courts stated. As a matter of fact, Petitioner would have faced a mandatory 10 years to life, under the First Step Act, and not mandatory life on Count one, had he been resentenced on Count one. Therefore, it is not true that Petitioner would have still remained at mandatory life on Count one. That would have changed to 10 years-to-life, and not mandatory life imprisonment, based on the First Step Act of 2018.

(6) Petitioner never conceded in this case, that under 21 U.S.C. § 848 was not a covered offense. Petitioner wishes to inform the Supreme Court that the government misled the court with that statement, because Petitioner never conceded to any such thing. Petitioner states that 21 U.S.C. § 848(e)(1)(A) is in fact a covered offense under § 404 of the First Step Act. See United States v. Brown, No. 3:08-CR-00011-1, 2020 WL 3106320 (W.D. Va. June 11, 2020) (the court found Mr. Brown eligible, and reduced his sentence to time served); United States v. Walker, No. 5:95-CR-101, DE620 (N.D.N.Y. October 25, 2019) (the court found Mr. Walker eligible, and reduced his sentence to 340 months); United States v. Hines, No. 5:94-CR-150, DE607 (N.D.N.Y. November 18, 2019) (the court found Mr. Hines eligible, and reduced his sentence to time served); United States v. Groves, No. 5:94-CR-97, DE690 (E.D.N.C. November 21, 2019) (on reconsideration, the court found Mr. Groves eligible, and

reduced his sentence to a total of 350 months); United States v. Dean, No. CR-97-276(3)(MJD), 2020 WL 2526476 (D. Minn. May 18, 2020) (the court found Ms. Dean eligible and reduced her sentence to time served); United States v. Jimenez, No. 92-CR-550-01 (JSR), 2020 WL 2087748 (S.D.N.Y. Apr. 30, 2020) (the court found Mr. Jimenez eligible, and reduced his sentence to 360 months); United States v. Davis, No. 5:93-CR-30025-003, 2020 WL 1131147 (W.D. Va. Mar. 9, 2020) (the court found Mr. Davis eligible, but declined to reduce his sentence); Wright v. United States, 425 F.Supp. 3d 588 (E.D. Va. 2019) (the court found Mr. Wright eligible, and reduced his sentence to 360 months); United States v. Robinson, No. 98-CR-60, DE606 (E.D. Wis. Sept. 27, 2019) (the court found Mr. Robinson eligible, and reduced his sentence to time served) (see DE624).

(7) As set forth in these cases above, they verify and they also found that a CCE is a **covered offense**. Therefore, Petitioner would have received a different sentence, and Count one would not have remained the same, and Petitioner's other counts would have also changed as well at a resentencing, based on all of the information stated above in this Writ of Certiorari.

(8) Because Petitioner was eligible for a further reduction in his sentencing and the lower court stated that his sentence would not be changed on Counts one, two, and three because they would have remained the same, which is not true, according to all of the above stated information in this Petition.

Petitioner's Fifth Amendment right to due process to his Sixth Amendment right to a fair and impartial resentencing was violated, based on all of the information stated above in this Writ of Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Peter R. Jordan

Date: 7-12-23