IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal Action No. 3:04-CR-58-1–HEH
	)	
PETER ROBERT JORDAN,	)	
	)	
Defendant.	)	

MEMORANDUM ORDER
(Granting in Part and Denying in Part Defendant's Motion to Reduce Sentence)

THIS MATTER is presently before the Court on Peter Robert Jordan's ("Defendant") Motion to Reduce Sentence Pursuant to § 404 of the First Step Act of 2018 (the "Motion"), filed on April 19, 2021.[1] (Mot., ECF No. 352.) Defendant asks this Court to reduce his sentence from a term of life in prison to a term of 324 months.[2] (*Id.* at 2–3.) Defendant and the Government have filed memoranda supporting their respective positions, and the Motion is ripe for this Court's review. The Court will dispense with oral argument because the facts and legal contentions have been adequately presented to the Court, and oral argument would not aid in the decisional process. *See*

[1] Defendant initially filed a *pro se* Motion to Reduce (ECF No. 329), and a Motion to Appoint Counsel on July 19, 2019 (ECF No. 330). Thereafter, the Court ordered the Clerk to appoint counsel to represent Defendant. (ECF No. 332.) After several requests for extensions of time, Defendant's counsel filed the Motion now before the Court.

[2] Such a sentence would be achieved by reducing Defendant's sentence on Counts One and Four to a term of 240 months' imprisonment to run concurrent with each other. (*Id.* at 3, 9.) Defendant, nevertheless, has an additional 84 months to serve on Count Three that must run consecutive to his sentence on all other Counts. (*Id.* at 9.) Thus, Defendant asks for a reduced sentence of 324 months' imprisonment total.

E.D. Va. Local Crim. R. 47(J). For the reasons that follow, the Court will grant in part and deny in part Defendant's Motion.

The Court "must first determine whether the sentence qualifies for reduction" under the First Step Act. *United States v. Lancaster*, 997 F.3d 171, 174 (4th Cir. 2021); *see United States v. Gravatt*, 953 F.3d 258, 262 (4th Cir. 2020); *United States v. Wirsing*, 943 F.3d 175, 185 (4th Cir. 2019). This stage of the analysis is *not* discretionary and is dictated by the statutory text of the First Step Act. *Lancaster*, 997 F.3d at 174. To qualify for a reduction, the defendant's sentence must be for a "'covered offense' — that 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 of 2010, and that was committed before August 3, 2010.'" *Id.* (quoting First Step Act, Pub. L. No. 115-391, § 404(a), 132 Stat. at 5222 (citation omitted)). A covered offense includes any conviction under 21 U.S.C. §§ 841(b)(1)(A)(iii) or (b)(1)(B)(iii). *Id.*; *Wirsing*, 943 F.3d at 186; *Gravatt*, 953 F.3d at 262.[3] The Defendant must also address his Motion to the court that imposed the sentence. *Lancaster*, 997 F.3d at 174. Lastly, the Defendant's sentence "must not have been 'previously imposed or previously reduced' under the Fair Sentencing Act and must not have been the subject of a motion made after enactment of the First Step Act that was denied 'after a complete review of the motion on the merits.'" *Id.* at 175 (quoting First Step Act, § 404(c), 132 Stat. at 5222).

[3] The United States Court of Appeals for the Fourth Circuit earlier held that 21 U.S.C. § 841(b)(1)(C) also qualified as a covered offense under the First Step Act. *United States v. Woodson*, 962 F.3d 812, 817 (4th Cir. 2020). The United States Supreme Court, however, has since held that § 841(b)(1)(C) is not a covered offense. *Terry v. United States*, 593 U.S. ___, ____, 141 S. Ct. 1858, 1864 (2021).

In this case, Defendant was sentenced on February 24, 2006, to four counts of a Second Superseding Indictment, including conspiracy to distribute 50 grams or more of cocaine base in violation of 21 U.S.C. § 841(b)(1)(A)(iii) and 21 U.S.C. § 846 (Count Four). (J., ECF No. 254.) Thus, Defendant was charged with a covered offense. *See Lancaster*, 997 F.3d at 174. Defendant also correctly addressed his Motion to the Court that sentenced him. Further, Defendant's sentence was not imposed or reduced under the Fair Sentencing Act, nor has Defendant previously made a motion under the First Step Act that was resolved on the merits. The Government argues that, even though Count Four is a covered offense, Defendant's other counts are not. (Gov't's Resp. at 26–30, ECF No. 353.) Defendant, however, need only be convicted of one covered offense to qualify for relief under the First Step Act. *See Gravatt*, 953 F.3d at 264; *Wirsing*, 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, Defendant is eligible for relief under the First Step Act.

After determining that Defendant qualifies for a sentence reduction, the Court has the discretion to impose a reduced sentence as if the Fair Sentencing Act was in effect at the time the covered offense was committed. *Id.* at 175. Beyond the provisions of the Fair Sentencing Act, the Court must consider any "nonfrivolous arguments presented by the parties" and may consider other intervening changes of law or changes of fact in fashioning a new sentence. *Concepcion v. United States*, 597 U.S. ___, ___, 142 S.Ct. 2389, 2396 (2022).

The circumstances of Defendant's offense are detailed in the Presentence Report. (PSR, ECF No. 325.) In September 2001, Defendant and his co-defendant, Arthur Gordon ("Gordon"), sold cocaine base out of 1714 Clarkson Road, Apartment F, in Richmond, Virginia (the "apartment"). (*Id.* ¶ 11.) Together, they devised a plan to rob another drug dealer and obtain his drugs and money. (*Id.* ¶¶ 12–13.) To that end, Defendant and Gordon contacted Dwayne Tabon ("Tabon") and asked to buy a supply of cocaine base. (*Id.* ¶ 13.) Close to midnight on September 13, 2001, Tabon arrived at the apartment with three other individuals in order to sell drugs to Defendant and Gordon. (*Id.* ¶¶ 13, 15.) He proceeded into the apartment alone with about 62 grams of cocaine base, some money, and a firearm. (*Id.* ¶ 15.) When Tabon entered the apartment, Defendant and Gordon tied him up with duct tape. (*Id.*) Outside, the other individuals realized that something was going wrong and fled the scene. (*Id.* ¶ 16.)

After some time, Defendant and Gordon wrapped Tabon, still alive, up in trash bags and placed him in the trunk of a car. (*Id.* ¶ 17.) They drove to an abandoned house in Richmond and took Tabon to the woods behind the house. (*Id.* ¶ 19.) There, they beat Tabon to the point that his skull fractured, doused him with gasoline, and lit him on fire. (*Id.*) Miraculously, Tabon survived long enough to regain consciousness and try to soothe his burns using water from the spigot of a nearby house. (*Id.* ¶ 20.) Two individuals found him there and called the police. (*Id.*) Tabon died from his wounds about ten days later on September 24, 2001. (*Id.* ¶ 22.)

In the aftermath, Defendant threatened to harm witnesses of the incident if they talked. (*Id.* ¶ 23.) One of these witnesses, after briefly talking to the police, committed

suicide. (*Id.* ¶ 24.) Defendant learned of the investigation into the murder of Tabon and decided to flee from the Richmond area. (*Id.* ¶ 26.) Almost two years later, on June 17, 2004, he was arrested in New York with false identification papers. (*Id.*)

After two earlier indictments, on September 7, 2004, a Grand Jury named Defendant and Gordon in a Second Superseding Indictment charging Defendant with murder while engaged in a drug trafficking offense (Count One), conspiracy to use and carry firearms (Count Two), possession of a firearm in furtherance of a drug trafficking crime (Count Three), and conspiracy to distribute 50 grams or more of cocaine base and a detectable amount of heroin (Count Four). (Sec. Super. Indict., ECF No. 25; PSR ¶ 3.) On November 8, 2005, a jury found Defendant guilty on all four counts of the Second Superseding Indictment.[4] (Jury Verdict, ECF No. 223; PSR ¶ 5.)

On February 24, 2006, the Court sentenced Defendant to life in prison on Count One, life in prison on Count Four, 240 months on Count Two, all to run concurrently and an additional 84 months on Count Three to run consecutively to all other counts. (J., ECF No. 254.) At the time of his original sentencing, Defendant faced a Sentencing Guidelines range of life in prison on Count One, 240 months—restricted by a statutory maximum—on Count Two, 84 months to run consecutively to all other sentences on Count Three, and life in prison on Count Four. (Sec. Revised Worksheet at 1, ECF No. 368.) If sentenced today, Defendant would face the exact same ranges *except* that the Guidelines range on Count Four is now restricted by a statutory maximum of 480 months

[4] As to Count Four, the jury found that Defendant was guilty of conspiracy to distribute 50 grams or more of cocaine base but was not guilty of conspiracy to distribute heroin. (PSR ¶ 5.)

of imprisonment. (*Id.* at 2; Mot. at 9–10; Gov't's Resp. at 30); *see* 21 U.S.C. 841(b)(1)(B) (describing penalties for distributing 28 grams or more of cocaine base).

At the very least, the Court believes it is appropriate to reduce Defendant's sentence on Count Four to the now applicable statutory maximum sentence of 480 months based on the First Step Act and Fair Sentencing Act. Yet, because Defendant is serving a life sentence on Count One, this reduction will not affect his total term of imprisonment. Because of this reality, Defendant makes numerous arguments as to why his sentence on Count One and Count Four should be further reduced. (Mot. at 10–15.)

First Defendant argues that there is an unwarranted disparity between his sentence and his codefendant Gordon's sentence. (*Id.* at 11.) Gordon and Defendant each originally received a life sentence for Tabon's murder and related crimes (ECF Nos. 254, 256), but the Fourth Circuit reversed Gordon's entire conviction because it was barred by an earlier plea agreement. *United States v. Jordan*, 509 F.3d 191, 195–200 (4th Cir. 2007). Later, the Government prosecuted Gordon for conduct related to Tabon's murder including conspiracy to interfere with commerce, but the prosecution was limited by the Fourth Circuit's decision. *See* Indictment, ECF No. 1, *United States v. Gordon*, No. 3:07cr487 (Dec. 18, 2007). Gordon later pled guilty and was sentenced to 240 months of imprisonment. *See* J., ECF No. 17, *Gordon*, No. 3:07cr487 (Apr. 23, 2008).

This is all to say that, while there is a disparity between Defendant and Gordon's sentence, that disparity is *warranted* by the circumstances of the case. Defendant and Gordon each originally received life sentences, and Gordon's was reversed for reasons entirely unrelated to Defendant. *See Jordan*, 509 F.3d at 200 (noting that Defendant had

no prior plea agreement with the Government that could affect his case like Gordon). Jordan would receive an inexplicable windfall if the Court reduced his sentence just because his codefendant received a lessor sentence for legal reasons unrelated to the offense conduct.

Defendant next argues that his prison record and his health justify a reduced sentence. (Mot. at 12; Prison Recs., ECF No. 352.) In 17 years of incarceration, Defendant has only received one disciplinary infraction. (*Id.*) He has completed his GED and participates in various other activities. (*Id.*) Defendant has Type II diabetes, has struggled with shingles, and tested positive for COVID-19 in 2020. (*Id.*) Besides these relatively minor concerns, he is in good health. (*Id.*) While the Court commends Defendant for his behavior in prison, the seriousness of Defendant's offense and the need to protect the public continue to justify his current prison sentence.

Lastly, Defendant contends that his comprehensive release plan and strong family support justify a reduced sentence. (Mot. at 13–14.) While the Court agrees that Defendant's release plan is detailed and is glad that members of Defendant's family continue to have a relationship with him (*see* Letters, ECF No. 352-2–4), these factors do not overcome the cruelty of Defendant's crime.

A modification of Defendant's sentence also fails to satisfy the relevant § 3553(a) factors—such as the nature and circumstances of the offense, the history and characteristics of the defendant, and the need to promote respect for the law. As recounted at length above, Defendant and Gordon brutally murdered Tabon by beating him and setting him on fire. (PSR ¶ 19.) After the murder, Jordan attempted to dissuade

witnesses from going to the police and evaded law enforcement for over a year. (*Id.* ¶¶ 23–26.) There is no question that such a crime is among the most serious and deserves a lengthy prison sentence. Furthermore, besides the statutory maximum on Count Four, which the Court has already accounted for, Defendant's Sentencing Guidelines range remains unchanged.

Defendant's criminal history also cautions against reducing Defendant's sentence. He committed a bank robbery with a dangerous weapon and larceny in the 1970s. (*Id.* ¶¶ 36–37.) In 1982, he was convicted of possession of heroin and failure to appear. (*Id.* ¶ 38.) From 1982 until Defendant's murder of Tabon in 2001, Defendant was not convicted of other major crimes. However, his return to such serious violent crime and drug trafficking after almost two decades without a conviction highlights that Defendant struggled to follow the law when out of prison. Reducing Defendant's sentence would fail to protect the public or deter others from committing violent crime.

While Defendant is eligible for a reduced sentence under the First Step Act, granting such relief is discretionary. *See Lancaster*, 997 F.3d at 175. The Court has considered the intervening caselaw and facts, Defendant's non frivolous arguments, and the § 3553(a) factors. *Concepcion*, 597 U.S. at ___,142 S. Ct. at 2396. Based on these considerations, the Court concludes that a reduced sentence on Count Four is appropriate, but further reduction of Defendant's sentence is not. Thus, Defendant's Motions to Reduce Sentence (ECF No. 329, 352) are GRANTED IN PART and DENIED IN PART. Defendant's sentence on Count Four is REDUCED from life to 480 months of imprisonment. Defendant's sentences on Counts One, Two, and Three remain

unchanged. In all other respects, the Court's Judgment (ECF No. 254) on February 24, 2006, remains unchanged.

The Clerk is DIRECTED to send a copy of this Memorandum Order to all counsel of record and the Federal Bureau of Prisons.

It is so ORDERED.

/s/
Henry E. Hudson
Senior United States District Judge

Date: August 16, 2022
Richmond, VA

Received - 8-23-22

Appx-B

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6976

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PETER ROBERT JORDAN, a/k/a Pete, a/k/a Richard Mercer,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, Senior District Judge. (3:04-cr-00058-HEH-1)

Submitted: March 16, 2023 Decided: March 21, 2023

Before WILKINSON, AGEE, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Peter Robert Jordan, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Peter Jordan appeals the district court's order granting in part and denying in part his motion for a sentence reduction pursuant to § 404(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5222. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order and deny Jordan's motion for the appointment of counsel. *United States v. Jordan*, No. 3:04-cr-00058-HEH-1 (E.D. Va. Aug. 16, 2022). 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

APX "C"

FILED: May 16, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6976
(3:04-cr-00058-HEH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

PETER ROBERT JORDAN, a/k/a Pete, a/k/a Richard Mercer

Defendant - Appellant

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

Additional material from this filing is available in the Clerk's Office.