

Appendix (A)

UNPUBLISHED

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

No. 22-7332

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY ANDREWS, a/k/a Wheat,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Wilmington. James C. Dever III, District Judge. (7:16-cr-00030-D-3)

No. 23-1086

In re: ANTHONY ANDREWS, a/k/a Wheat,

Petitioner.

On Petition for Writ of Mandamus. (7:16-cr-00030-D-3)

Submitted: March 14, 2023

Decided: March 22, 2023

Before THACKER and HARRIS, Circuit Judges, and MOTZ, Senior Circuit Judge.

No. 22-7332, affirmed; No. 23-1086, petition denied by unpublished per curiam opinion.

Anthony Andrews, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In No. 22-7332, Anthony Andrews appeals the district court's order disposing of several postjudgment motions. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *United States v. Andrews*, No. 7:16-cr-00030-D-3 (E.D.N.C. Nov. 7, 2022). While we grant Andrews' motion to seal the informal brief, we deny his motions to proceed by pseudonym and to consolidate.

In No. 23-1086, Andrews petitions for a writ of mandamus, alleging that the district court has unduly delayed in ruling on two motions—one challenging a standing order and the other seeking to disqualify the Assistant United States Attorney (AUSA) assigned to this case. However, the district court order on appeal in No. 22-7332 disposed of Andrews' challenge to the standing order. Thus, this request is moot.

As for the motion seeking the disqualification of the AUSA, the district court docketed Andrews' motion on October 24, 2022. Thus, the present record does not reveal undue delay in the district court.* Accordingly, we deny the mandamus petition. 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.

*No. 22-7332, AFFIRMED;
No. 23-1086, PETITION DENIED*

* We note that while it appears that the district court intended to dispose of this motion in its November 7, 2022, order, that order did not rule on this motion. In light of the voluminous filings submitted by Andrews, we do not fault the district court for overlooking this one discrete request for relief.

Appendix (c)

UNITED STATES OF AMERICA, Plaintiff - Appellee v. ANTHONY ANDREWS, a/k/a Wheat,
Defendant - Appellant In re: ANTHONY ANDREWS, a/k/a Wheat, Petitioner
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
2023 U.S. App. LEXIS 10613
No. 22-7332 (L), No. 23-1086
May 1, 2023, Filed

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1}(7:16-cr-00030-D-3).
(7:16-cr-00030-D-3).United States v. Andrews, 2023 U.S. App. LEXIS 6882, 2023 WL 2597605 (4th Cir. N.C., Mar. 22, 2023)

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee (22-7332): Lucy Partain Brown, Assistant U. S. Attorney, Dennis Duffy, Assistant U. S. Attorney, Rudy E. Renfer, Assistant U. S. Attorney, Timothy Severo, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, NC.
For ANTHONY ANDREWS, Defendant - Appellant (22-7332): Anthony Andrews, FCI BUTNER MEDIUM I, Butner, NC.
In re: ANTHONY ANDREWS, Petitioner (23-1086), Pro se, Butner, NC.

Judges: Entered at the direction of the panel: Judge Thacker, Judge Harris, and Senior Judge Motz.

Opinion

ORDER

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

Entered at the direction of the panel: Judge Thacker, Judge Harris, and Senior Judge Motz.

Appendix (B)

U.S. District Court
EASTERN DISTRICT OF NORTH CAROLINA

Notice of Electronic Filing

The following transaction was entered on 11/7/2022 at 4:32 PM EST and filed on 11/7/2022

Case Name: USA v. Dixon et al

Case Number: 7:16-cr-00030-D

Filer:

Document Number: 617

Docket Text:

ORDER as to Anthony Andrews (3) denying [603] Motion to Reduce Sentence regarding First Step Act - Section 404 ; granting [608] [613] [614] Motion to Seal Document; and denying [615] Motion to Stay. Signed by District Judge James C. Dever III on 11/7/2022. (Jennings, A.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:16-CR-30-D

UNITED STATES OF AMERICA)
v.)
ANTHONY ANDREWS,)
Defendant.)
ORDER)

Defendant is serving a sentence of 132 months' imprisonment for conspiracy to manufacture, distribute, dispense, and possess with intent to distribute a quantity of endocet, methadone, oxycodone, oxycontin, and oxymorphone. See [D.E. 469]. Defendant has filed and lost numerous motions and appeals since receiving his sentence. See [D.E. 536, 548, 557, 564, 587]. For the reasons stated in the government's omnibus response [D.E. 611], the court DENIES as meritless defendant's motions at [D.E. 592, 593, 594, 600, 607]. This order does not address any motion assigned to Chief Judge Myers in case number 7:01-CR-27-M-1 concerning defendant's revocation sentence except to deny defendant's motion to appoint counsel [D.E. 603] in this case. Cf. [D.E. 603-1]. For the reasons stated in the government's response [D.E. 610], the court DENIES defendant's latest motion for compassionate release [D.E. 603]. See also [D.E. 564, 587, 590]. The court GRANTS defendant's motions to seal [D.E. 608, 613, 614]. Finally, the court DENIES AS MOOT defendant's motion to stay [D.E. 615].

SO ORDERED. This 7 day of November, 2022.

James C. Dever III
United States District Judge

Appendix (D)

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

**Scott S. Harris
Clerk of the Court
(202) 479-3011**

June 15, 2023

Mr. Anthony Andrews
Prisoner ID 15965-056
FCI Butner
P.O. Box 1000
Butner, NC 27509

**Re: Anthony Andrews
v. United States
Application No. 22A1086**

Dear Mr. Andrews:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to The Chief Justice, who on June 15, 2023, extended the time to and including September 28, 2023.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by 

Rashonda Garner
Case Analyst

Appendix (E)

UNITED STATES OF AMERICA, Plaintiff, v. ANTHONY ANDREWS, Defendant.
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA,
SOUTHERN DIVISION
2020 U.S. Dist. LEXIS 242177
NO. 7:01-CR-00027-M
December 22, 2020, Decided
December 22, 2020, Filed

Editorial Information: Subsequent History

Vacated by, Remanded by, Request denied by, Motion granted by, Motion denied by United States v. Andrews, 2022 U.S. App. LEXIS 21032, 2022 WL 3010179 (4th Cir. N.C., July 29, 2022) Writ denied by, Request granted In re Doe, 2023 U.S. App. LEXIS 7144 (4th Cir., Mar. 24, 2023)

Editorial Information: Prior History

In re Andrews, 82 Fed. Appx. 853, 2003 U.S. App. LEXIS 25809 (4th Cir., Dec. 19, 2003)

Counsel {2020 U.S. Dist. LEXIS 1}Anthony Andrews, aka: Wheat, Defendant,
Pro se, Farmville, VA USA.

For Anthony Andrews, aka: Wheat, Defendant: Jennifer Haynes Rose, LEAD ATTORNEY, Raleigh, NC USA.

For U. S. Attorneys: Dena J. King, Laura S. Howard, LEAD ATTORNEYS, Seth Morgan Wood, United States Attorney's Office - EDNC, Raleigh, NC USA; Lawrence Jason Cameron, United States Attorney's Office, Raleigh, NC USA.

Judges: RICHARD E. MYERS II, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: RICHARD E. MYERS II

Opinion

ORDER

Before the Court are Defendant's Motion to Reduce Sentence (18 U.S.C. § 3582(c)(1)(A)) for Extraordinary and Compelling Reasons [filed March 31, 2020; DE 390] and a supplemental motion for "nunc pro tunc" treatment of Defendant's completion of the exhaustion requirement for his March 31 motion [filed May 22, 2020; DE 401]. Also before the Court for its consideration are the parties' response and reply briefs and Defendant's "addenda" [see DE 393, 396, 405, 450, 454, 458].

The Court finds an adjudication of Defendant's motions requires review of the procedural history of this case (hereafter, "*Andrews I*") and a related case. On June 12, 2001, Defendant entered a guilty plea to a charge of distribution of crack cocaine. DE 29. On November 5, 2001, Defendant was sentenced{2020 U.S. Dist. LEXIS 2} to 188 months' imprisonment, five years' supervised release, a fine of \$9,700.00, and a special assessment of \$100.00. *Id.* On October 11, 2016, while on supervised release for the 2001 conviction, Defendant entered a guilty plea to conspiracy to manufacture, distribute, dispense and possess with the intent to distribute quantities of endocet,

methadone, oxycodone, oxycontin and oxymorphone. See *United States v. Andrews*, No. 7:16-CR-0030-D-3 ("Andrews II"), at DE 1, 184, 383 (E.D.N.C. Oct. 11, 2016). On November 15, 2018, Defendant was sentenced to 132 months' imprisonment, three years' supervised release, and a special assessment of \$100.00. *Id.* at DE 465, 469. On August 9, 2019, as a result of his conviction in *Andrews II*, Defendant's term of supervised release was revoked in *Andrews I*, resulting in an additional 12-month term of imprisonment. *Andrews I*, DE 309, 314. The two terms of imprisonment were aggregated for a total term of 144 months. *Id.* at DE 458-1 at 2-3; see also Defendant's Addendum at 1, DE 450 ("The 12 months are in []Aggregate with a 132 month sentence imposed by Judge Dever[] in case no. 7:16-cr-30-D3 on 11/15/2018.").

On March 31, 2020 and May 22, 2020, Defendant{2020 U.S. Dist. LEXIS 3} filed (respectively) the present motion for compassionate release and the present supplemental motion in this case, citing medical grounds and the presence of COVID-19 at the facility. *Andrews I*, DE 390, 401. In *Andrews II*, Defendant filed an identical motion for compassionate release on March 31, 2020, as well as an identical reply brief and the same or similar addenda. See 7: 20-CR-00030-D at DE 519, 522, 524, 528. On August 24, 2020, the Honorable James C. Dever III issued an order denying Defendant's motion. *Id.* at 536.

The Court finds that Judge Dever's order resolves the Defendant's requests in this case. It is undisputed that the 12-month sentence imposed in *Andrews I* was aggregated with the 132-month sentence imposed in *Andrews II*. Courts typically view consecutive sentences, like those imposed here, "in the aggregate, not as discrete segments." *Garlotte v. Fordice*, 515 U.S. 39, 47, 115 S. Ct. 1948, 132 L. Ed. 2d 36 (1995) (addressing a challenge under 28 U.S.C. § 2254); see also *Bernard v. Garraghty*, 934 F.2d 52, 54 (4th Cir. 1991) ("Peyton sets forth quite clearly the law concerning the custody status of prisoners who are serving consecutive sentences: for such prisoners, custody for habeas purposes is defined not by any one particular sentence but by the aggregate of the sentences.") (citing *Peyton v. Rowe*, 391 U.S. 54, 64, 88 S. Ct. 1549, 20 L. Ed. 2d 426 (1968)). Although neither the Fourth Circuit{2020 U.S. Dist. LEXIS 4} nor any district courts therein have opined as to the construction of an aggregate sentence for the purpose of adjudicating release under 18 U.S.C. § 3582(c), a court in the District of Columbia has determined that a defendant's federal and local sentences were aggregated by the BOP and, thus, it was proper to adjudicate a motion for compassionate release under the First Step Act even though the defendant had arguably finished serving his federal sentence and commenced serving the "local" sentence imposed for a conviction under the D.C. Code. See *United States v. Hammond*, No. CR 02-294 (BAH), 2020 U.S. Dist. LEXIS 67331, 2020 WL 1891980, at *6, *8 (D.D.C. Apr. 16, 2020) ("the federal compassionate release provision is better read as a procedural mechanism that applies to all sentences imposed by federal courts").

Here, no party disputes that Defendant's sentences in *Andrews I* and *Andrews II* have been aggregated into one 144-month sentence; thus, the motions filed in this case for compassionate release are merely duplicates of the motion filed and adjudicated by Judge Dever in *Andrews II*. Accordingly, Defendant's motions at DE 390 and DE 401 are DENIED as moot.

SO ORDERED this 22 day of December, 2020.

/s/ Richard E. Myers II

RICHARD E. MYERS II

UNITED STATES DISTRICT JUDGE

Appendix (F)

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. ANTHONY ANDREWS, a/k/a Wheat,
Defendant - Appellant.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

2022 U.S. App. LEXIS 21032

No. 20-7908

July 29, 2022, Decided

July 26, 2022, Submitted

Notice:

**PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING
THE CITATION TO UNPUBLISHED OPINIONS.**

Editorial Information: Prior History

{2022 U.S. App. LEXIS 1}Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. (7:01-cr-00027-M-1). Richard E. Myers, II, Chief District Judge. United States v. Andrews, 2020 U.S. Dist. LEXIS 242177, 2020 WL 7643121 (E.D.N.C., Dec. 22, 2020)

Disposition:

VACATED AND REMANDED.

Counsel

Anthony Andrews, Appellant, Pro se.

Kristine L. Fritz, Assistant United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Judges: Before MOTZ, KING, and THACKER, Circuit Judges.

Opinion

PER CURIAM:

Anthony Andrews appeals the district court's order denying his motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. We vacate the district court's order and remand for further proceedings consistent with this opinion.

We review a district court's ruling on a motion for compassionate release for abuse of discretion. *United States v. Kibble*, 992 F.3d 326, 329 (4th Cir.), cert. denied, 142 S. Ct. 383 (2021). A district court abuses its discretion when it "acts arbitrarily or irrationally, . . . fails to consider judicially recognized factors constraining its exercise of discretion, . . . relies on erroneous factual or legal premises, or . . . commits an error of law." *United States v. High*, 997 F.3d 181, 187 (4th Cir. 2021) (cleaned up).

We briefly recount the procedural history of this case as it is necessary for our disposition. In 2001, Andrews{2022 U.S. App. LEXIS 2} pled guilty, pursuant to a written plea agreement, to distributing at least five grams of cocaine base, in violation of 21 U.S.C. § 841(a)(1). The district court sentenced Andrews to 162 months of imprisonment and 5 years of supervised release.

After Andrews served his active sentence and was serving his term of supervised release, the probation officer moved to revoke Andrews' supervised release because a grand jury returned an indictment alleging that Andrews conspired to manufacture, distribute, dispense, and possess with intent to distribute Endocet, Methadone, Oxycodone, Oxycontin, and Oxymorphone, in violation of 21 U.S.C. § 846. The indictment alleging new criminal conduct was filed in a case before District Judge Dever. District Judge Boyle presided over the proceedings related to the revocation of Andrews' supervised release.

Andrews pled guilty before Judge Dever, and Judge Boyle continued the revocation proceedings pending sentencing on Andrews' new conviction. Judge Dever sentenced Andrews to 132 months' imprisonment. Judge Boyle then revoked Andrews' supervised release and imposed a 12-month, consecutive sentence.

Andrews subsequently filed identical motions for compassionate release before Judges Boyle and {2022 U.S. App. LEXIS 3} Dever. Andrews' motions sought relief based on the risk of infection posed by COVID-19. In August 2020, Judge Dever denied the motion filed in his case. We affirmed Judge Dever's order. *United States v. Andrews*, 837 F. App'x 195, 195 (4th Cir. 2021) (No. 20-7329).

After Judge Dever denied his motion, Andrews filed an "addendum" in the case before Judge Boyle; he argued that his sentence on the new criminal charge and his revocation sentence were now aggregated as one sentence by the Bureau of Prisons. Andrews also argued that he would have been subject to a shorter sentence on his 2001 conviction had the changes in interpretation of the career offender Sentencing Guidelines and Section 404 of the First Step Act of 2018 been in effect at that time. Counsel then filed a supplemental memorandum on Andrews' behalf, addressing Andrews' health conditions, his risk of contracting a severe case of COVID-19 and the applicable 18 U.S.C. § 3553(a) factors. While this motion was pending, the district court reassigned Andrews' case from Judge Boyle to Chief District Judge Myers.

Judge Myers also denied Andrews' compassionate release motion. He recognized that Andrews filed identical motions in March 2020 before Judges Boyle and Dever. Judge Myers believed that Judge Dever's order denying {2022 U.S. App. LEXIS 4} Andrews' motion was dispositive because the two sentences were aggregated. Accordingly, Judge Myers denied Andrews' motion as moot. Andrews now appeals Judge Myers' order.

On appeal, Andrews focuses heavily on Judge Myers' use of the word moot, contending that Judge Myers believed he did not have the authority to reduce Andrews' sentence. We disagree with this reading of the order. In our view, Judge Myers understood that he could reduce Andrews' sentence, at least as to the 12-month revocation sentence. But in the interest of deferring to Judge Dever, Judge Myers opted not to reconsider Judge Dever's decision on the compassionate release motion. Because the initial motions were identical, we believe that Judge Myers rightfully exercised his discretion to defer to Judge Dever's order.

However, because Judge Dever denied Andrews' motion before Andrews filed his supplement raising a new claim, Judge Dever did not address this new claim, nor did Judge Myers address it in his order. We have held that "district courts are empowered to consider any extraordinary and compelling reason for release that a defendant might raise." *United States v. McCoy*, 981 F.3d 271, 274 (4th Cir. 2020) (cleaned up). Thus, Judge Myers could have considered this argument. {2022 U.S. App. LEXIS 5}

We have clarified that a district court need not address every argument raised by a defendant in a compassionate release motion. *High*, 997 F.3d at 187. Instead, "the touchstone must be whether the district court set forth enough to satisfy our court that it has considered the parties' arguments and

has a reasoned basis for exercising its own legal decisionmaking authority, so as to allow for meaningful appellate review." *Id.* at 190 (cleaned up). While we conclude that Judge Myers was not required to analyze Andrews' motion more extensively as it related to COVID-19, we believe he should have addressed Andrews' supplemental filing in which he asserted an additional basis for compassionate release due to changes in the law since his 2001 conviction. *Cf. McCoy*, 981 F.3d at 286 (recognizing district court can consider nonretroactive changes in law in considering whether to grant defendant compassionate release).

Accordingly, we vacate the district court's order and remand for further proceedings consistent with this opinion. We reject Andrews' request to reassign this case to a different judge on remand. While we grant Andrews' motion for judicial notice, we deny all other pending motions in this case. We dispense with oral argument because **(2022 U.S. App. LEXIS 6)** the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED

Appendix (G)

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JOHN DOE, Defendant - Appellant,
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

2022 U.S. App. LEXIS 33419
No. 20-6165, No. 20-6166, No. 22-7045
December 5, 2022, Decided
November 28, 2022, Submitted

Notice:

**PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING
THE CITATION TO UNPUBLISHED OPINIONS.**

Editorial Information: Prior History

{2022 U.S. App. LEXIS 1}Appeals from the United States District Court for the Eastern District of North Carolina, at Wilmington. Richard E. Myers, II, Chief District Judge; Terrence W. Boyle, District Judge. (7:01-cr-00027-M-1; 7:01-cr-00027-BO-1).United States v. Andrews, 113 Fed. Appx. 524, 2004 U.S. App. LEXIS 22958 (4th Cir. N.C., Nov. 3, 2004)

Disposition:

VACATED AND REMANDED.

Counsel

John Doe, Appellant, Pro se.

David A. Bragdon, Assistant United States Attorney, Rudy E. Renfer, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Judges: Before KING, AGEE, and THACKER, Circuit Judges.

Opinion

PER CURIAM:

John Doe appeals the district court's orders denying his motions for relief under Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, and for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). We vacate the district court's orders and remand for further proceedings.

We review for abuse of discretion a district court's decision whether to grant a reduction under the First Step Act. *United States v. Jackson*, 952 F.3d 492, 497 (4th Cir. 2020). "A district court abuses its discretion when it acts arbitrarily or irrationally, fails to consider judicially recognized factors constraining its exercise of discretion, relies on erroneous factual or legal premises, or commits an error of law." *United States v. Jenkins*, 22 F.4th 162, 167 (4th Cir. 2021) (internal quotation marks omitted). "As a general matter, it is not the role of an appellate court to substitute its judgment{2022 U.S. App. LEXIS 2} for that of the sentencing court as to the appropriateness of a particular sentence," and, "[o]ther than legal errors in recalculating the Guidelines to account for the Fair Sentencing Act's changes, appellate review should not be overly searching." *Concepcion v. United States*, 142 S. Ct. 2389, 2404, 213 L. Ed. 2d 731 (2022) (cleaned up).

"Under § 404(b) of the First Step Act, sentencing courts may impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed." *United States v. McDonald*, 986 F.3d 402, 408-09 (4th Cir. 2021) (cleaned up). In ruling on a First Step Act motion, a district court "must first determine whether the sentence qualifies for reduction-i.e., whether it is eligible for consideration on the merits." *United States v. Lancaster*, 997 F.3d 171, 174 (4th Cir. 2021) (internal quotation marks omitted). Among other criteria, "the sentence sought to be reduced must be for a covered offense." *Id.* (internal quotation marks omitted). Doe is eligible for a reduced sentence. See *United States v. Venable*, 943 F.3d 187, 194 (4th Cir. 2019) (concluding defendant was eligible for relief under the First Step Act when he was serving a revocation sentence and had been first convicted of a covered offense under the First Step Act).

The Supreme Court recently clarified how a district court should exercise its discretion when ruling on a First Step Act motion. When a defendant is eligible for relief, "the First Step Act directs district{2022 U.S. App. LEXIS 3} courts to calculate the Guidelines range as if the Fair Sentencing Act's amendments had been in place at the time of the offense." *Concepcion*, 142 S. Ct. at 2402 n.6. Thus, "[a] district court cannot . . . recalculate a movant's benchmark Guidelines range in any way other than to reflect the retroactive application of the Fair Sentencing Act." *Id.* "The district court may then consider postsentencing conduct or nonretroactive changes in selecting or rejecting an appropriate sentence, with the properly calculated Guidelines range as the benchmark." *Id.*

"[W]hen deciding a First Step Act motion, district courts bear the standard obligation to explain their decisions and demonstrate that they considered the parties' [nonfrivolous] arguments." *Id.* at 2404. However, a court "may, in its discretion, dismiss arguments that it does not find compelling without a detailed explanation." *Id.* The district court is not "required to articulate anything more than a brief statement of reasons" or "expressly rebut each argument made by the parties." *Id.* (internal quotation marks omitted). "All that the First Step Act requires is that a district court make clear that it reasoned through the parties' arguments." *Id.* (cleaned up).

The district court{2022 U.S. App. LEXIS 4} did not calculate a new Guidelines range nor explicitly consider Doe's postsentencing conduct or his other arguments for a lesser sentence. Accordingly, we vacate the district court's order denying Doe's motions seeking relief under Section 404 and remand for reconsideration in light of *Concepcion*.¹

Turning to Doe's motion for compassionate release, we review the district court's order for abuse of discretion. *United States v. Kibble*, 992 F.3d 326, 329 (4th Cir.), cert. denied, 142 S. Ct. 383, 211 L. Ed. 2d 204 (2021). We previously vacated the district court's order denying Doe's compassionate release motion to consider an argument that changes in the law meant that Doe had overserved his previous sentence. Because this argument overlapped with Doe's arguments under Section 404, the district court deferred to its prior ruling denying Doe relief. Since we are vacating this ruling, we think it prudent to also vacate the district court's order denying Doe's compassionate release motion as well. On remand, the district court may consider all of Doe's arguments-including those made in his August 2022 supplemental filing-under Section 404 and the compassionate release statute. While Doe requests that we direct reassignment to a different district judge, we decline his request to do so.² See *United States v. McCall*, 934 F.3d 380, 384 (4th Cir. 2019).

Accordingly, we vacate the district{2022 U.S. App. LEXIS 5} court's orders and remand for further proceedings. By this disposition, we express no view on whether Doe is entitled to a reduced sentence under Section 404 or 18 U.S.C. § 3582(c)(1)(A). We grant Doe's motions to seal, to proceed by pseudonym, and to expedite. 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.

VACATED AND REMANDED

Footnotes

1

Doe also seeks to challenge several sealing decisions, but we have already ruled on the merits of these challenges, and we do not revisit our prior decisions.

2

Doe is a voluminous filer, whose numerous filings have made case management difficult for the district court. We applaud the district court's efforts to handle the various matters in this case efficiently and expeditiously.

Appendix (H)



UNITED STATES PROBATION OFFICE
EASTERN DISTRICT OF NORTH CAROLINA

James L. Corpeling, Jr.
Chief U.S. Probation Officer

REPLY TO: 201 South Evans Street, Rm 214

Greenville, NC 27858-1137

Phone: 252-830-2340 (Ms. Benfield)

919-737-4673 (Mr. Nuckles)

DATE: March 10, 2023

FROM: Tate Nuckles
Sentencing Guidelines Technician

SUBJECT: Anthony Andrews
Docket #: 7:01-CR-27-1M
First Step Act, Section 404 - Retroactive Application for Fair Sentencing Act

TO: Richard E. Myers II
Chief United States District Judge

Section 404 of the First Step Act indicates a court that imposed a sentence for a violation of a Federal criminal statute for which the statutory penalties were modified by Section 2 or 3 of the Fair Sentencing Act of 2010, committed before August 3, 2010, 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.

Application of Sections 2 and 3 of the Fair Sentencing Act of 2010 has the effect of lowering the statutory provisions and/or the guideline provisions as indicated below:

Offense(s) of Conviction: Count 3: Distribution of Cocaine Base
5 to 40 years imprisonment/4 years to life supervised release

**Fair Sentencing Act
Statutory Provisions:** Count 3: Not more than 20 years imprisonment/3 years to life supervised release

Drug Quantity (final determination by court): 30 grams of cocaine base and 3.5 kilograms of cocaine, which have a converted drug weight of 807.13 kilograms.

Original Sentence Date (date of last sentence imposed):

August 9, 2019 (2000 U.S. Sentencing Commission Guidelines Manual is applicable)

Original Sentence (last sentence imposed):

Counts 3: 12 months imprisonment

Departure/Variance/Rule 35 (reflect any departure, variance, or Rule 35 and summarize the reason for the reduction, percentage of the reduction, and the number of months required for a comparable reduction from the new range): On November 5, 2001, the defendant was sentenced to 188 months imprisonment, followed by 5 years of supervised release. The court found the total offense level to be 29 with a criminal history category of V which produced a guideline range of 140 to 175 months. The court then upwardly departed to a criminal history category VI due to the inadequacy of the criminal history category and sentenced the defendant at the top of the range. On May 5, 2009, the court reduced the term of imprisonment to 162 months pursuant to 18 U.S.C. § 3582(c)(2) after finding the new total offense level to be 27 with a criminal history category of V which produced a guideline range of 120 to 150 months. The court upwardly departed to a criminal history category VI to produce a comparable sentence of 162 months. The defendant was released from imprisonment and began serving a 5-year term of supervised release on June 6, 2012.

On November 15, 2018, the defendant was sentenced to 132 months imprisonment following his conviction for Conspiracy to Manufacture, Distribute, Dispense, and Possess With Intent to Distribute a Quantity of Endocet, Methadone, Oxycodone, Oxycontin, and Oxymorphone in 7:16-CR-30-3D. The relevant conduct for 7:16-CR-30-3D began in 2012, which was during the 5-year term of supervised release on the instant case. Therefore, on August 9, 2019, the court revoked the defendant's term of supervised release in the instant case and sentenced him to 12 months imprisonment, consecutive to the 132-month term imposed in 7:16-CR-30-3D. Based on the statutory penalty changes, the maximum imprisonment term allowed upon revocation of supervised release in the instant case is 24 months. Thus, while the defendant is eligible for consideration for First Step Act relief, his 12-month revocation sentence is consistent with both the revised statutory penalty and guideline revocation imprisonment range. Had the defendant been sentenced today under the 2021 U.S Sentencing Guidelines manual, the base offense level would be 28, minus 3 for acceptance of responsibility which produces a total offense level of 25 with a criminal history category V. This produces a guideline range of 100 to 125 months. A comparable sentence pursuant to the previously imposed upward departure produces a sentence of 137 months. Due to time constraints, the position of the parties was not obtained.

Public Safety Considerations: The defendant has cumulatively sustained one BOP disciplinary infraction for Refusing Work/Program Assignment (2008).

Post-Sentencing Conduct: The defendant has cumulatively completed course work in Nutrition, Cuban Missile Crisis, Employment, Information Fair, Solar System, Horticulture, Non-Residential Drug and Alcohol Dependency, Financial Literacy, Green Living, Solar Energy, Metabolism, Public Speaking, Walking, American History, Personal Finance, Men's Health, Nutrition, French, Starting a Business, Exercise, Stress Management, HIV/AIDS Awareness, HVAC Certification, Transitional Services, Probation Services, Placement, Release Methods, Putting the Past Behind, Budgeting, Disease Prevention, Psychology of Change, Anger Management, Drug Abuse Treatment, On the Job Training, Workplace Safety, Employer's Expectations, Interviewing, Resumes, Job Application, Employability Assessment, Making and Researching Careers, Prisoner Reentry, Financial Literacy, Research/Apply Case Law, Man 2 Man Seminar, Umpire Training, and Drug Education. He has paid all special assessment fees and fines.

Release Plan: The defendant is currently serving 132 months imprisonment for his conviction in 7:16-CR-30-3D and 12 months imprisonment, consecutive, for his revocation in the instant case. His projected release date is July 17, 2025.

Reviewed and Approved:

/s/ Kristi O. Benfield
Deputy Chief U.S. Probation Officer

cc: Anthony Andrews
AUSA
Defense Counsel
Deputy Clerk of Court

Appendix (I)

BUTDB 540*23 *
PAGE 001 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 02-17-2023

* 02-17-2023
* 08:51:20

REGNO..: 15965-056 NAME: ANDREWS, ANTHONY

FBI NO.....: 355348FA5 DATE OF BIRTH: 08-16-1965 AGE: 57
ARS1.....: BUT/A-DES
UNIT.....: 6 SCP QUARTERS.....: F05-011L
DETAINERS.....: NO NOTIFICATIONS: NO

FSA ELIGIBILITY STATUS IS: ELIGIBLE

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.

HOME DETENTION ELIGIBILITY DATE....: 01-17-2025

FINAL STATUTORY RELEASE FOR INMATE.: 07-17-2026 VIA GCT REL
WITH APPLIED FSA CREDITS.: 365 DAYS
THE INMATE IS PROJECTED FOR RELEASE: 07-17-2025 VIA FSA REL

-----CURRENT JUDGMENT/WARRANT NO: 040 -----

COURT OF JURISDICTION.....: NORTH CAROLINA, EASTERN DISTRICT
DOCKET NUMBER.....: 7:16-CR-30-3-D
JUDGE.....: DEVER
DATE SENTENCED/PROBATION IMPOSED: 11-15-2018
DATE COMMITTED.....: 06-28-2019
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	\$100.00	\$00.00	\$00.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE....: 391 21:846 SEC 841-851 ATTEMPT
OFF/CHG: 21:846, 21:841(B) (1) (C) CONSPIRACY TO MANUFACTURE, DISTRIBUTE,
DISPENSE, AND POSSESS WITH INTENT TO DISTRIBUTE A QUANTITY OF
ENDOCET, METHADONE, OXYCODONE, OXYCONTIN, AND OXYMORPHONE

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 132 MONTHS
TERM OF SUPERVISION.....: 3 YEARS
DATE OF OFFENSE.....: 03-16-2016

G0002 MORE PAGES TO FOLLOW . . .

BUTDB 540*23 *
PAGE 002 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 02-17-2023

* 02-17-2023
* 08:51:20

REGNO...: 15965-056 NAME: ANDREWS, ANTHONY

-----COURT OF JURISDICTION/WARRANT NO: 050 -----

COURT OF JURISDICTION.....: NORTH CAROLINA, EASTERN DISTRICT
DOCKET NUMBER.....: 7:01-CR-27-1BO
JUDGE.....: BOYLE
DATE SENTENCED/PROBATION IMPOSED: 11-05-2001
DATE SUPERVISION REVOKED.....: 08-09-2019
TYPE OF SUPERVISION REVOKED.....: REG
DATE COMMITTED.....: 09-20-2019
HOW COMMITTED.....: COMMIT OF SUPERVISED REL VIOL
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	\$100.00	\$00.00	\$9,700.00	\$00.00

RESTITUTION....: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----COURT OBLIGATION NO: 010 -----

OFFENSE CODE....: 409 21:841 & 846 SEC 841-851
OFF/CHG: 21:841(A) 91) DISTRIBUTION OF COCAINE BASE (CRACK)

SENTENCE PROCEDURE.....: SUPERVISED RELEASE VIOLATION PLRA
SENTENCE IMPOSED/TIME TO SERVE.: 12 MONTHS
RELATIONSHIP OF THIS OBLIGATION
TO OTHERS FOR THE OFFENDER....: CS 040/010/040
DATE OF OFFENSE.....: 11-01-2000

G0002 MORE PAGES TO FOLLOW . . .

BUTDB 540*23 *
PAGE 003 OF 003 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 02-17-2023

* 02-17-2023
* 08:51:20

REGNO.: 15965-056 NAME: ANDREWS, ANTHONY

-----CURRENT COMPUTATION NO: 040 -----

COMPUTATION 040 WAS LAST UPDATED ON 09-10-2019 AT DSC AUTOMATICALLY
COMPUTATION CERTIFIED ON 09-11-2019 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 040: 040 010, 050 010

DATE COMPUTATION BEGAN.....: 11-15-2018
AGGREGATED SENTENCE PROCEDURE...: AGGREGATE GROUP 800 PLRA
TOTAL TERM IN EFFECT.....: 144 MONTHS
TOTAL TERM IN EFFECT CONVERTED.: 12 YEARS
AGGREGATED TERM OF SUPERVISION.: 3 YEARS
EARLIEST DATE OF OFFENSE.....: 11-01-2000

JAIL CREDIT.....: FROM DATE THRU DATE
04-26-2016 11-14-2018

TOTAL PRIOR CREDIT TIME.....: 933
TOTAL INOPERATIVE TIME.....: 0
TOTAL GCT EARNED AND PROJECTED.: 648
TOTAL GCT EARNED.....: 324
STATUTORY RELEASE DATE PROJECTED: 07-17-2026
ELDERLY OFFENDER TWO THIRDS DATE: 04-26-2024
EXPIRATION FULL TERM DATE.....: 04-25-2028
TIME SERVED.....: 6 YEARS 9 MONTHS 23 DAYS
PERCENTAGE OF FULL TERM SERVED.: 56.7
PERCENT OF STATUTORY TERM SERVED: 66.6

PROJECTED SATISFACTION DATE.....: 07-17-2025
PROJECTED SATISFACTION METHOD...: FSA REL
WITH FSA CREDITS INCLUDED...: 365

REMARKS.....: 07-17-19:COMP ENTRD/CASE NO 7:01CR27-1 HAS BEEN APPEALED C/SIG
09-10-19:CS COMP ENTRD/SJW 050 C/SIG.

G0000 TRANSACTION SUCCESSFULLY COMPLETED

§ 3584. Multiple sentences of imprisonment

(a) Imposition of concurrent or consecutive terms. If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

(b) Factors to be considered in imposing concurrent or consecutive terms. The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a) [18 USCS § 3553(a)].

(c) Treatment of multiple sentence as an aggregate. Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

HISTORY:

Added Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(2), 98 Stat. 2000.