

22-415-cr (L)
United States v. Fuller

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

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit,
held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of
New York, on the 7th day of February, two thousand twenty-four.

PRESENT:

**JOHN M. WALKER, JR.,
SUSAN L. CARNEY,
MICHAEL H. PARK,**
Circuit Judges.

United States of America,

Appellee,

v.

22-415-cr (L),
22-1200-cr (Con)

Leonel Arellano, AKA Pudge, AKA Pudgie, Fabian Nash,
AKA Fabe, AKA Ramone Vaughn, Tyrone Garcia, AKA
Greedy, AKA Slim, AKA Ty, Ramone Vaughn, AKA
Ramone Williams, Edward Gotay, AKA Devane, AKA
Eddie, Damaris Tyesha Garcia, Hysain Kasaj, AKA Hus,

Defendants,

Morris Fuller, AKA PJ, AKA Power Just, Enver
Mehmeti, AKA En,

Defendants-Appellants.

FOR APPELLEE:

Samantha Alessi, David C. James & Anna L. Karamigios, Assistant United States Attorneys, *for* Breon Peace, United States Attorney, Eastern District of New York, Brooklyn, NY.

FOR DEFENDANTS-APPELLANTS:

César de Castro, The Law Firm of César De Castro, P.C., New York, NY *for* Morris Fuller.

James M. Schmitz, Law Office of James M. Schmitz, New York, NY *for* Enver Mehmeti.

Appeal from orders of the United States District Court for the Eastern District of New York

(Glasser, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND

DECREED that the order of the district court as to Fuller is **AFFIRMED** and the order of the district court as to Mehmeti is **VACATED AND REMANDED**.

Defendants-Appellants Morris Fuller and Enver Mehmeti were members of a gang dealing cocaine and crack cocaine in Staten Island before their 2010 and 2009 indictments and subsequent convictions. Each received a lengthy sentence: 240 months for Fuller and 324 for Mehmeti. After the passage of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194, Fuller and Mehmeti each moved for a sentence reduction. The district court denied Fuller's motion, *see United States v. Fuller*, No. 09-CR-0165 (ILG), 2022 WL 598430 (E.D.N.Y. Feb. 28, 2022), and reduced Mehmeti's sentence by seven months, *see United States v. Mehmeti*, 604 F. Supp. 3d 70 (E.D.N.Y. 2022). Fuller challenges the denial of his motion. Mehmeti argues that his sentence should have been reduced further. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

1 We review a district court’s decision on a motion for a reduced sentence for abuse of
2 discretion. *See United States v. Holloway*, 956 F.3d 660, 664 (2d Cir. 2020).

3 **I. Fuller**

4 Fuller argues that the district court did not adequately explain its decision to deny his
5 motion. We disagree. The district court noted that Fuller’s 240-month sentence was “only slightly
6 higher than the maximum recommended range” of 188 to 235 months. *Fuller*, 2022 WL 598430,
7 at *2. It explained that “[i]n light of the circumstances of the crime and Fuller’s own history,” a
8 reduction was not warranted: Fuller “was the admitted supplier of a significant quantity of cocaine
9 and crack cocaine to several street-level dealers, as well as to gang members” and he had been
10 selling drugs for over a decade. *Id.* Additionally, Fuller’s behavior in prison, which included
11 fighting, threatening, possessing drugs, violence against staff, possession of weapons, and a serious
12 assault, was “not the sort that makes the Court inclined to exercise its discretion and reduce the
13 sentence it previously imposed.” *Id.* at *3.

14 This is sufficient because it is “enough explanation of how [the district court] exercised its
15 sentencing discretion to permit meaningful appellate review.” *United States v. Torres*, No. 21-
16 2511-cr, 2022 WL 17087048, at *3 (2d Cir. Nov. 21, 2022) (quoting *United States v. Christie*, 736
17 F.3d 191, 196 (2d Cir. 2013)). We thus affirm the district court’s order denying Fuller’s motion.

18 **II. Mehmeti**

19 Mehmeti and the government agree that remand is necessary as to Mehmeti because the
20 district court failed to apportion his sentence among his crimes of conviction as required by section
21 5G1.2(e) of the Sentencing Guidelines and because of changes in law subsequent to the district
22 court’s decision. We thus vacate and remand as to Mehmeti. Intervening case law has cast doubt
23 on three of the district court’s legal conclusions. First, “a district court adjudicating a motion under

1 the First Step Act may consider other intervening changes of law (such as changes to the
2 Sentencing Guidelines) or changes of fact (such as behavior in prison).” *Concepcion v. United*
3 *States*, 597 U.S. 481, 486 (2022). But a district court may not “recalculate a movant’s benchmark
4 Guidelines range in any way other than to reflect the retroactive application of the Fair Sentencing
5 Act. Rather, the First Step Act directs district courts to calculate the Guidelines range as if the
6 Fair Sentencing Act’s amendments had been in place at the time of the offense.” *Id.* at 498 n.6.
7 Second, as we have recently stated, section 220.39(1) of the New York Penal Law is categorically
8 broader than its federal counterpart because it covers more than optical and geometric isomers of
9 cocaine. *See United States v. Minter*, 80 F.4th 406, 410-11 (2d Cir. 2023); *United States v.*
10 *Chaires*, 88 F.4th 172, 178-79 (2d Cir. 2023).

11 Third, in adjudicating Mehmeti’s First Step Act motion, the district court stated that it
12 would “not consider any of the additional policy arguments that Mehmeti advances in support of
13 a further reduction in his sentence,” explaining that “consideration of such arguments is not
14 appropriate on a motion for relief under the First Step Act.” *Mehmeti*, 604 F. Supp. 3d at 75-76.
15 The Supreme Court has made clear, however, that “district courts are always obligated to consider
16 nonfrivolous arguments presented by the parties” in the First Step Act context—including, for
17 example, “evidence of postsentencing rehabilitation.” *Concepcion*, 597 U.S. at 487, 498. On
18 remand, then, the district court should consider Mehmeti’s nonfrivolous arguments. Of course,
19 the district court is not *required* to exercise its discretion to reduce Mehmeti’s sentence based on
20 those arguments. *See id.* at 487. We vacate the district court’s order and remand so that the district
21 court can apportion the sentence and evaluate the impact of this intervening case law.

22 * * *

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: February 07, 2024

Docket #: 22-415cr

Short Title: United States of America v. Mehmeti (Fuller)

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 1:09-cr-165-8

DC Court: EDNY (BROOKLYN)

DC Judge: Go

DC Judge: Glasser

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
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New York, NY 10007**

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VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature