

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES EDWARD JOHNSON
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent(s)

Case No. 24-6155

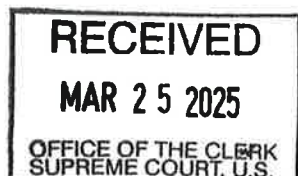
MOTION FOR PETITION REHEARING

COMES NOW, Petitioner, Charles Edward Johnson, pro se, and respectfully MOVE this Honorable Court to GRANT this motion for petition rehearing. In doing so the Petitioner states the following.

On January 27, 2025, The Court today entered the following order in the above-entitled case the petition for writ certiorari is denied.

PROCEDURAL HISTORY AND RELEVANT FACTS

On June 12, 2007, A Grand Jury sitting in and for the United States District Court for the Western District of Texas named Mr. Johnson in a one count Indictment, charging him with Possession with intent to Distribute at least 5 grams of cocaine base ("Crack") within 1000 feet of a Public Elementary School.



According to statute at the time, the charge carried a mandatory 5 to 40 years sentence. See, 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(iii) & 860(a). Mr. Johnson case is Non - Violent.

The matter went to jury trial on September 4-5, 2007, and Petitioner was found guilty by jury of 5 grams of crack cocaine.

On March 13, 2008, Petitioner was sentence to 30 years and 5 months and 8 years supervised release, and a Fine of \$11,000, and a Assessment \$100.00.

SECTION 2 OF THE FIRST STEP ACT

Increased the quantity of COCAINE BASE necessary trigger the highest statutory penalties from 50 grams to 280 grams, and the quantity of cocaine base necessary to trigger intermediate statutory penalties from 5 grams to 28 grams. See Fair Sentencing Act § 2. The Fair Sentencing Act was signed into law and became effective on August 3, 2010.

The Fair Sentencing Act's charges to the drug quantity thresholds applied to defendants who were sentenced after August 3, 2010, even if their offense conduct occurred before the law's effect date. See, Dorsey v. United States, 567 U.S. 260 (2012).

ARGUMENT PLAIN ERROR

The District Court must address non-frivolous arguments that a defendant has raised. See, Concepcion v. United States, 597 U.S. 481 (2022).See

Petitioner argument that the Fair Sentencing Act should have been applied to his sentence on direct appeal. Petitioner eventually petitioned for certiorari.

Whether or not the district court's failure to apply the Fair Sentencing Act Constitutes a plain error. See, Hicks v. United States, 137 S. Ct. 2000, (2017).

In order to establish the existence of a plain error, an appellant must show (i) the existence of an error (ii) that is "Clear or Obvious," (iii) that affects the appellant's Substantive Rights, and (iv) that "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." See Puckett v. United States, 556 U.S. 129, 135, (2009)(internal quotation omitted). In this case, and as the Government has Conceded all of the factors are met. In light of Dorsey, there is an unresolved error is clear. It is also clear that the error violated Petitioner substantial rights. Petitioner was sentenced subject to an improper mandatory minimum and "experience surely teaches that a defendant

entitled to a sentence consistent with 18 U.S.C. § 3553(a)'s, parsimony provision, rather than pursuant to the rigors of a statutory mandatory minimum, will after receive a much lower sentence." See, Hicks v. United States, 137 S. Ct. 2000, 2001 (2017) (Gorsuch J, Concurring). This error affect the fairness, integrity, and public reputation of judicial proceedings.

Petitioner also noted that, following the recent Amendment 814 to the guidelines, and November 1, 2023, his sentence meets the definition as an "Extraordinary and Compelling Reason" for modification whereas he has served over 10 years in prison and the changes in the law and rehabilitation. See, Concepcion v. United States, 597 U.S. 481, 502 (2022). A district court may consider intervening changes of fact when it determines whether a sentence should be reduced. But a district court's discretion to consider those changes only comes into play if the First Step Act of 2018 authorizes relief in the first instance. The Fair Sentencing Act's changes-and only those changes-are the ones that dictate a district court's authority to grant First Step Act relief.

The district court's explanation for denying Mr. Johnson's motion for a reduction does not adequately explain why Mr. Johnson should not receive at least some sentence reduction. After reciting Mr. Johnson's criminal conduct that resulted in his 2007 conviction, the district court recalled that it had examined the §

3553(a)(2) sentencing factors and had explained why a sentence of 30 years imprisonment was appropriate during Mr. Johnson's original sentencing in March 13, 2008. Beyond relying on the court's analysis at the original sentencing hearing, the court briefly discussed the nature and circumstances of Mr. Johnson's offense and the need to protect the public-two of the § 3553(a) factors. The court pointed to the scale and harm of Mr. Johnson's criminal conduct and determined that Mr. Johnson has a high risk for recidivism based on statistical information of people who, like Mr. Johnson, have a significant criminal history. However, these considerations are accounted for within the guidelines calculation and therefore do not provide sufficient justification for maintaining a sentence that is twice the maximum of the guideline range set by Congress. See 28 U.S.C. § 991(b); Rita v. United States, 551 U.S. 338, 348-49, 127 S. Ct. 2456, 168 L. Ed. 2d 203 (2007); See also, Gall v. United States, 552 U.S. 38, 128 S. Ct. 586 (2007).

During that time, his PATTERN assessments have determined that Mr. Johnson now poses a LOW RISK of recidivating after his release from prison. See, [EXHIBIT 1] First Step Act Documentation Latest PATTERN Risk Assessment.

Mr. Johnson also argues that further incarceration would be "greater than necessary to serve the purposes of punishment," and

that he is far different from the person who was sentenced 18 years ago. Mr. Johnson argues that he has made significant efforts toward working and Unicor Prison industries at the Texarkana facility and I work in the Unit of C-1 as T-ORD and toward rehabilitation, such as completing over 2,000 hours of programs offered by the prison and over 1,500 hours of vocational training. Mr. Johnson states that he has had no history of misconduct at the facility where he is incarcerated, and that he has had no incident reports in 3 years.

Fair sentencing Act took effect. Fair sentencing Act of 2010, Pub.l.No. 111-220, 124 stat. 2372. The Fair Sentencing Act increased the drug amounts triggering mandatory minimum sentences for federal crack trafficking offenses. Had it applied to Mr. Johnson, the Fair Sentencing Act would have reduced his applicable minimum sentence to 2 years of imprisonment.

Moreover, the fact that Congress the actor that reduced Mr. Johnson's guideline range through the passage of the First Step Act, rather than the Sentencing Commission.

Mr. Johnson's sentence appears to be exactly the kind of "UNUSUALLY LONG SENTENCE" as is envisioned by the Amendment 814 to the Sentencing Guidelines as a basis for Compassionate relief. Mr. Johnson been incarcerated since June 8, 2007, and Mr. Johnson has

already served more than 10 years in prison. The Court should applies the 2023 amendment to Section 1B1.13(b)(6) and finds that Mr. Johnson's "Unusually Long Sentence" Constitutes extraordinary and Compelling reasons for a reduction of sentence.

The Court in Pepper v. United States, 562 U.S. 476, 131 S. Ct. 1229, 179 L. Ed. 2d 196, found it "clear that when a defendant's sentence has been set aside on appeal and his case remanded for resentencing, a district court may consider evidence of a defendant's rehabilitation since his prior sentencing."

The District Court did not address Mr. Johnson's evidence of rehabilitation or the Government's countervailing evidence of Mr. Johnson's disciplinary record.

Where district court must calculate New Guidelines ranges as part of resentencing proceedings, courts have also exercised their discretion to consider nonretroactive guidelines changes. See, Concepcion v. United States, 597 U.S. 481 LEXIS 3070 (January 27, 2022).

Here, in its one - paragraph order denying Compassionate Release, the district court stated that it "consider[ed] the applicable factors provided in 18 U.S.C. § 3553(a), and the applicable policy statements issued by the Sentencing Commission."

The district court's order does not provide the factual basis for denial and leaves unanswered questions regarding the factual basis for denial and the policy statements it deemed applicable. In similar circumstances, we have remanded such cases for the district court to explain its reasons for denial. See, United States v. McMayion, NO. 21-50450, 2023 U.S. App. Lexis 15712, 2023 WL 4118015, at *2 (5th Cir. June 22, 2023)(unpublished)(per curiam); United States v. Guzman, No. 20-51001, 2022 U.S. App. LEXIS 33833, 2022 WL 17538880 at *1 (5th Cir. Dec. 8, 2022)(unpublished)(per curiam). We follow the same course here. "As we typically do in such situations, we will retain appellate jurisdiction." See Guzman, 2022 U.S. App. LEXIS 33833, 2022 WL 17538880 at *3. See United States v. Beltran, 2023 U.S. App. LEXIS 21930 (5th Cir. August 21, 2023).

CONCLUSION


But Mr. Johnson punishment no longer fits his crimes nor Mr. Johnson as an individual. See Pepper v. United States, 526 U.S. 476, 487-88, 131 S. Ct. 1229,(2011). No theory of punishment justifies Mr. Johnson continued incarceration. Because there are Extraordinary and Compelling reasons warranting a reduction in his sentence, and Mr. Johnson has satisfied all other Statutory Requirements.

If Petitioner was sentenced under the Fair Sentencing Act today and under the change of law the petitioner Base Offense Level 14 2D1.1(c)(14) at least 2.86 but less than 5.6 G of cocaine base. The petitioner base offense level, 14, 15-21 Months. See, [EXHIBIT 2] Recommendation from United States Probation Officer for Reduction of Sentence under the Fair Sentencing Act.

HERFORE, for the foregoing reasons, the Petitioner, Mr. Johnson, respectfully Moves this Honorable Court to Granted this Motion Petition for Rehearing and Grated a Immediate Release from the Bureau Of Prisons (BOP). Petitioner ask the court to Vacate petitioner sentence and remand to the district court for resentencing and Immediate Release.

On March 11, 2025

Respectfully,


Charles Edward Johnson
Reg. No. 83808-180
FCI TEXARKANA
P.O. BOX 7000
Texarkana, Texas 75505

CERTIFICATE OF MAILING AND SERVICE

I hereby certify under penalty of perjury that a true and correct copy of the foregoing Petitioner Motion For Petition Rehearing. Has been placed in the Institutional Legal Mail System, appropriate postage prepaid and addressed to:

On this 11, day of March, 2025.


Affiant

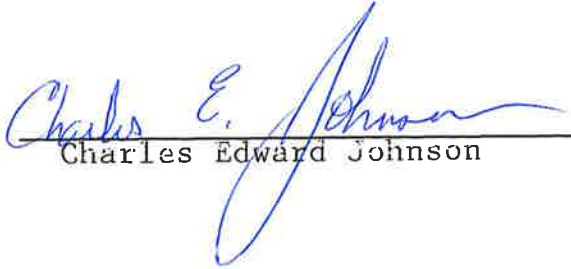
cc

UNITED STATES OF JUSTICE
OFFICE OF THE SOLICITICE
ROOM 5612
Washington, DC 20530

CERTIFICATION

I hereby certify that this petition for reconsideration presented here in are limited to substantril grounds not previously presented in good faith, and that it is not intended to delay the proceedings.

March 11, 2025,


Charles Edward Johnson

EXHIBIT

1

FIRST STEP ACT DOCUMENTATION
LATEST PATTERN RISK ASSESSMENT
RISK ASSESSMENT HISTORY
PROGRAM PARTICIPATION RECORD

FSA Recidivism Risk Assessment (PATTERN 01.03.00)

Register Number: 83808-180, Last Name: JOHNSON

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Register Number: 83808-180

Inmate Name

Last.....: JOHNSON

First.....: CHARLES

Middle.....: EDWARD

Suffix.....:

Gender.....: MALE

Risk Level Inmate....: R-LW

General Level.....: R-LW (26)

Violent Level.....: R-LW (17)

Security Level Inmate: MEDIUM

Security Level Faci...: LOW

Responsible Facility.: TEX

Start Incarceration...: 03/13/2008

PATTERN Worksheet Summary

Item	- Value	- General Score	- Violent Score
Current Age	54	7	4
Walsh w/Conviction	FALSE	0	0
Violent Offense (PATTERN)	FALSE	0	0
Criminal History Points	11	32	12
History of Escapes	0	0	0
History of Violence	3	3	6
Education Score	HighSchoolDegreeOrGED	-2	-2
Drug Program Status	NoNeed	-6	-3
All Incident Reports (120 Months)	4	3	3
Serious Incident Reports (120 Months)	2	2	2
Time Since Last Incident Report	11	1	1
Time Since Last Serious Incident Report	11	0	0
FRP Refuse	FALSE	0	0
Programs Completed	17	-12	-4
Work Programs	3	-2	-2
		Total 26	17

PATTERN Worksheet Details

Item: Programs Completed, Value: 17

General Score: -12, Violent Score: -4

Risk Item Data

Category	- Assignment	- Start	- Stop
DRG	ED COMP	04/19/2012 10:27	
EDC	A SPA ENG1	01/11/2010 00:01	01/11/2010 00:01
EDC	ELL 8:20	04/12/2012 08:20	04/12/2012 08:20
EDC	SFTSKILS-M	05/30/2012 12:30	05/30/2012 12:30
EDC	INVESTMENT	10/01/2014 12:43	10/01/2014 12:43
EDC	LGL RESRCH	01/26/2015 09:02	01/26/2015 09:02
EDC	INVESTING	04/19/2019 08:12	04/19/2019 08:12
EDC	POETRY	07/09/2019 07:54	07/09/2019 07:54
EDC	SM BUSINES	07/09/2019 08:00	07/09/2019 08:00
EDC	GOVERNMENT	01/15/2020 12:06	01/15/2020 12:06

EXHIBIT

2

RECOMMENDATION FROM UNITED STATES
PROBATION OFFICER FOR REDUCTION
OF SENTENCE UNDER THE
FAIR SENTENCING ACT

First Step Act of 2018
United States District Court for the Western District of Texas
United States v. Charles Edward Johnson
Criminal No. W-07-CR-097(01)

Pursuant to the First Step Act of 2018, which makes the Fair Sentencing Act of 2010 retroactive, the following information is being provided.

	2018	
	Original Guideline Calculation	New Guideline Calculation
Base Offense Level	34	26
Adjustments	4	4
Adjusted Offense Level	38	30
Chapter Four Enhancements	0	0
Adjustment for Acceptance of Responsibility	0	0
Total Offense Level	38	30
Guideline Range (CHC: VI)	360 to Life	151 to 188 months

One or more of the following factors was present at the time of the original sentencing:

- | | |
|---|--|
| <input type="checkbox"/> U.S.S.G. § 5K1.1 Motion | <input type="checkbox"/> 18 U.S.C. § 3553(a) Variance |
| <input type="checkbox"/> 18 U.S.C. § 3553(e) Motion | <input type="checkbox"/> Rule 11(c)(1)(C) Plea Agreement |
| <input type="checkbox"/> Rule 35(b) Motion | |

Old Statutory Provisions: Possession With Intent to Distribute at Least 5 Grams of "Crack" Cocaine, a Schedule II Narcotic Drug Controlled Substance, Within 1000 Feet of a Public Elementary; Class B Felony; 5 years to 80 years in custody; at least 8 years of supervised release.

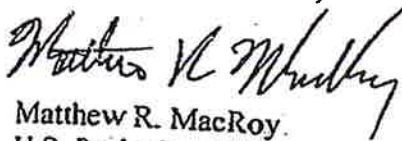
Original Sentence Imposed: 365 months imprisonment and 8 years supervised release.

New Statutory Provisions: 10 years to Life; at least 5 years of supervised release.

Projected Release Date: December 30, 2033

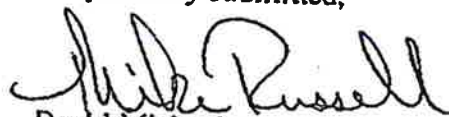
Other Information: The defendant filed several appeals and motions for a sentencing reduction under § 3582(c)(2) and was denied.

Respectfully submitted,



Matthew R. MacRoy
U.S. Probation Officer

Respectfully submitted,



David Michael Russell
Supervisory U.S. Probation Officer