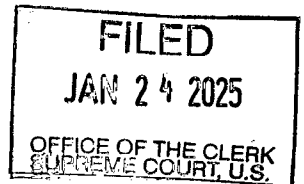


24-6730

No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE
UNITED STATES

RICHARD DAVID DEGOUT,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

Appeal from the United States Court of Appeals
for the Fourth Circuit

Mr. Richard David Degout
Pro se Petitioner
Reg. No. 28367-054
F.C.I. Otisville
Post Office Box 1000
Otisville, New York 10963

QUESTION PRESENTED

This Court should GVR this case to the lower court to address whether the procedural protections enshrined in the Due Process of Law allows a criminal defendant convicted of CCE Murder based on an offenses punishable under 21 U.S.C. §841(b)(1)(A) should be entitled to a reduction of sentence under the First Step Act.

TABLE OF AUTHORITIES

<u>Case</u>	<u>Page</u>
1. <u>Apprendi v. New Jersey</u> , 566 U.S. 466 (2000)	4
2. <u>In re Winsnip</u> , 397 U.S. 358 (1970)	7
3. <u>Lawrence v. Chater</u> , 516 U.S. 163 (1996)	4
4. <u>Mathews v. Eldridge</u> , 424 U.S. 319 (1976)	7
5. <u>Richardson v. United States</u> 526 U.S. 813 (1999)	9
6. <u>Terry v. United States</u> , 593 U.S. 486 (2021)	5
7. <u>United States v. Beckford</u> , 566 F.Supp. 1415 (E.D.Va. 1997)	8
8. <u>United States v. Degout</u> , U.S. Dist. Lexis 112037 (W.D.Va. 2023)	2, 6
9. <u>United States v. Degout</u> , U.S. App. 27533	3, 6
10. <u>United States v. Gaudin</u> , 515 U.S. 506 (1995)	7
11. <u>United States v. Ismel</u> , 153 F.3d. 713 (4th Cir. 1998)	2, 8
12. <u>United States v. Roane</u> , 51 F.4th 541 (4th Cir. 2022)	6

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

Title 18 United States Code Section 841(b)(1)(A)

Title 18 United States Code Section 848(e)(1)(A)

18 United States Code Section 3582(c)(1)(A)

Section 404-First Step Act Pub. L. No. 115-391; 132 Stat. 5194

United States Constitution, Amendment V - Due Process Clause

IN THE
SUPREME COURT OF THE
UNITED STATES

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit appears at Appendix A to petition and is reported at U.S. App. Lexis 27533 and is unpublished.

The Opinion of the United States District Court for the Western District of Virginia appears at Appendix B to the petition and is reported at U.S. Dist. Lexis 112037 and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was October 30, 2024.

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Petitioner was convicted following a jury trial on four counts which alleged he violated federal drug laws under 21 U.S.C. §846; §841(a)&(b)(1)(A)(iii) for possessing with intent and the distribution of crack cocaine--Count One; CCE Murder under 21 U.S.C. §848(e)(1)(A) for intentionally killing a person--Count Two; federal firearm laws for the Use of a firearm during and in relation to a drug trafficking offense--Count three; and 18 U.S.C. §1512 for Threatening a witness to prevent communication with law enforcement--Count Four.

All of petitioner's counts of conviction were run concurrent, with the exception of Count Three which the law requires to run consecutive to any other offense. Thus, petitioner was sentenced to concurrent terms of life imprisonment on Counts One and Two, ten (10) years on Count Four, and a consecutive term of five (5) years imprisonment on Count Three. These convictions and sentences were affirmed on direct appeal. See United States v. Ismel, 153 F.3d. 723 (Table); U.S. App. Lexis 18300 (4th Cir. August 7, 1998).

In 2020, Petitioner sought a reduction in sentence under the First Step Act on Counts One and Two of his indictment of conviction. The district court denied the motion although it found that his conviction under Count One was a covered offense, but determined that his §848(e)(1)(A) conviction on Count Two was not a covered offense. See United States v. Degout, U.S. Dist. Lexis 112037 (W.D.Va. June 8, 2023).

Petitioner filed a timely notice of appeal with the district court, and the court of appeals affirmed the district court's decision in an unpublished per curiam opinion. See United States v. Degout, U.S. App. Lexis 27533 (4th Cir. October 30, 2024).

This petition for a writ of certiorari follows the court of appeals decision.

REASON FOR GRANTING THE WRIT

This Court has the power to issue GVR Orders as an integral part of its practice when considering a "wide range of developments" in law. See Lawrence v. Chater, 516 U.S. 163 (1996). Specifically, the Court's power to Grant, Vacate and Remand (GVR) a lower court decision allows for legal developments that pose substantial questions that may if, "given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation, a GVR order is,...potentially appropriate." Id., p. 167.

Certainly, the question posed here not only involve strong due process implications, but also long standing principles enshrined in Sixth Amendment jurisprudence and concerns of statutory interpretation. Because the question presented here involves the bedrock principle inherent in a criminal defendant's fundamental right to only suffer incarceration after conviction on elements found by a jury. See Apprendi v. New Jersey, 566 U.S. 466 (2000). Important in this case is the change in law through the First Step Act which erodes the lower courts' findings this retroactive law does not apply in this instance. This is so especially considering Petitioner was convicted prior to the enactment of the First Step Act for violations of federal drug laws involving crack cocaine under Title 21 of the United States Code, to wit: 21 U.S.C. §§846; 841(b)(1)(A)(iii) and 21 U.S.C. §848(e)(1)(A).

Under these statutory provisions, it is a violation of federal law for a person to conspire to possess or possess with the intent to distribute (and/or the actual distribution) of a controlled substance; and to murder an individual while engaged in an offense that is "punishable" under §841(b)(1)(A). Consequently, Petitioner was convicted of the aforementioned drug related offenses resulting in him receiving two (2) concurrent life sentences.

As noted decades after Petitioner's convictions, Congress enacted the Fair Sentencing Act which, amongst other things, increased the threshold quantities of crack cocaine which triggered certain mandatory minimum sentences under §§841(b)(1)(A) & (b)(1)(B). The enactment of the Fair Sentencing Act was not made retroactive however, until Congress passed additional legislation under the First Step Act, which allowed eligible offenders to seek a reduction in their sentence if it involved a covered offense. See Terry v. United States, 593 U.S. 486, 492 (2021).

In Terry, this Court rejected the lower court ruling which found that the First Step Act applied to crack cocaine offenses under §841(b)(1)(C) because this statutory provision "never differentiated between crack and powder offenses." Id., at p. 494. To the contrary, the statutory provisions in subsections (b)(1)(A)(iii) and (b)(1)(B)(iii) specifically involved crack cocaine offenses and were the subject of the First Step Act legislation. Id., at p. 495 (holding that §2(a) of the Fair sentencing Act modified the statutory penalties only for

subparagraphs (A) and (B) crack cocaine offense--that is offenses that trigger mandatory minimum penalties". Thus, there is a clear distinction between the reasoning in Terry which rejected applying the First Step Act to §841(b)(1)(C). Consequently, both the district and circuit courts in Petitioner's case ignored this distinction and found the reasoning in Terry controlled its ruling because although §848(e)(1)(A) referenced §841(b)(1)(A) the former statute "create[d] a separate crime" given the statutory penalties did not change. See DeGout, Lexis 27533 *6-8 (following United States v. Roane, 51 F.4th 541 (4th Cir. 2022)); see also, DeGout, Lexis 112037 *9 ("determining that Count Two does not constitute a covered offense"); DeGout, Lexis 27533 *8 (affirming "the district court's holding that §848(e)(1)(A) is not a covered offense").

Even though, both courts found §848(e)(1)(A) is not a covered offense, the inquiry extends beyond such a cut and dry proposition. This is because the question is not whether the statutory penalties in §848(e)(1)(A) were mitigated but whether the modification of the "covered offense" under §841(b)(1)(A)(iii) can continue to support Petitioner's §848(e)(1)(A) sentence as a non-covered offense under the context of his case. For the lower courts to hold otherwise flies in the face of reason, when those courts explicitly recognized that Petitioner's sentence under Count One--i.e., a violation of §841(b)(1)(A) now carries a "statutory maximum of

480 months" which is the maximum sentence for a §841(b)(1)(B) offense. Degout, supra at Lexis 112037 *10; see also, Degout, supra at Lexis 27533 *14 (stating that "[t]he court explained...that the...sentence for Count One would not be 480 months...because that is the revived statutory maximum in light of the First Step Act").

Therefore, Petitioner's conviction for Count One is equivalent to a violation of 21 U.S.C. §841(b)(1)(B) following enactment of the retroactive First Step Act. Thus, in turn this removes Petitioner as a "person[] who w[as] engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, see Count One of this indictment)...in violation of Title 21, United States Code Section 848(e)(1)(A)." (Indictment filed March 9, 1994, p. 8). Significantly, both lower courts focused on the fact that the statutory penalties in §848(e)(1)(A) did not change, when the focus should have been on the "punishable" offense under §841(b)(1)(A) supporting retroactive application of the Fair Sentencing Act. See First Step Act of 2018, Pub. L. NO. 115-015 (2018).

Given the due process implications present in this case, see e.g., Mathews v. Eldridge, 424 U.S. 319 (1976)(recognizing due process is a broad concept), and long standing principles in the context of an indictment; see e.g., United States v. Gaudin, 515 U.S. 506, 510 (1995)(recognizing that the Sixth Amendment right in conjunction with due process requires that each element of a crime be proved beyond a reasonable doubt); see also In re Winship, 397 U.S. 358, 364 (1970), the retroactively applicable

First Step Act must extend to Petitioner's §848(e)(1)(A) offense which is dependent upon a violation of §841(b)(1)(A), the latter of which is a covered offense. Both courts in this case recognized as much when they conceded that his §841(b)(1)(A) offense in Count One was a covered offense, and the fact that it was directly referred in Count Two of his indictment.

Moreover, the Fourth Circuit in Petitioner's direct appeal recognized the principle that the aggravated drug amount--in this instance "crack cocaine" in violation of §841(b)(1)(A) was an essential element of a CCE murder offense. See United States v. Ismel, 153 F.3d. 723; U.S. App. Lexis 18300 (4th Cir. August 7, 1998). Clearly, in Ismel the panel recognized that:

"Section 841(b)(1)(A) is the subsection of Section 841(b) that provides penalties for those distributing the largest quantities of drugs. In relevant part, Section 841(b)(1)(A) provides stiff penalties for the distribution of greater than fifty grams of cocaine base. Other subsections of Section 841(b) provide lesser penalties for the distribution of lesser quantities of drugs. Therefore, when Congress enacted the relevant part of Section 848(e)(1)(A) and explicitly referred to killings committed while engaging in act punishable under Section 841(b)(1)(A), Congress obviously intended Section 848(e)(1)(A) to apply only to those killings committed while a defendant engages in the distribution of the larger quantities of drugs discussed in Section 841(b)(1)(A). Because Section 848(e)(1)(A) explicitly and exclusively refers to Section 841(b)(1)(A) however, we believe that proof beyond a reasonable doubt of the distribution of drug quantities set forth in Section 841(b)(1)(A) is a necessary element to prove a violation of Section 848(e)(1)(A)."

Id., at Lexis 18300 *16-17 (citing United States v. Beckford, 966 F.Supp. 1415, 1425 (E.D.Va. 1997); United States v.

DesAnges, 971 F.Supp. 349, 356 (W.D.Va. 1996)).

Now, when reading the Fourth Circuit's reasoning on direct appeal in Petitioner's case, it can only be recognized that after the passage of the First Step Act that any crack cocaine offense punishable under §841(b)(1)(A) & (b)(1)(B)--whether standing alone or supporting an §848(e)(1)(A) offense is open for a discretionary sentence reduction. Accord Richardson v. United States 526 U.S. 813, 817 (1999)(stating that "[f]ederal crimes are made up of factual elements, which are ordinarily listed in the statute that defines the crime" thus "[c]alling a particular kind of fact an 'element' carries certain legal consequences"). The consequence in this case is that a sentence under §848(e)(1)(A) cannot rest on anything other than a violation of §841(b)(1)(A), which under the change of law in the First Step Act creates an obvious infirmity. Moreover, as further recognized, "[w]hen interpreting a statute, [courts must] look first to the language" and in this case the §848(e)(1)(A) statute "explicitly" informs courts that a violation of CCE murder must rest on the elements of §841(b)(1)(A) exclusively. Id. at p. 818.

Based on the facts and law in Petitioner's case, his §848(e)(1)(A) offense should have been deemed a "covered offense" under the First Step Act because he was not only convicted by way of reference to §841(b)(1)(A)--a crack cocaine offense, but the essence of his CCE murder was premised on a violation of §841(b)(1)(A). The lower court's myopic view of the First Step Act's reference to "covered offense" applying only to

Mr. Richard David DeGout
Pro se Petitioner
Reg. No. 28367-054
F.C.I. Otisville
Post Office Box 1000
Otisville, N.Y. 10963

Richard DeGout

Respectfully submitted,

Dated: January 24, 2025

for further review.

Granted, the matter is vacated and remanded to the lower court
This Pro se Petitioner prays that a writ of certiorari is

CONCLUSION

section").
require a court to reduce any sentence pursuant to this
provides that "[n]othing in this section shall be construed to
relief based on the foregoing argument. See FSA 404(c)(which
consideration of petitioner's entitlement of First Step Act
supports issuance of a GVR Order. This will allow for further
in this instant case did not base their decision on discretion
First Step Act is discretionary, the fact that the lower courts
Finally, even assuming that eligibility of relief under the
sentences for individuals convicted of crack offenses.
the goal of the First Step Act which sought to correct unjust
direct violations of §841(b)(1)(A) or (b)(1)(B) renders useless