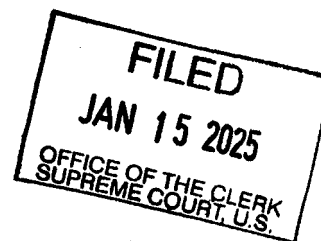


25-7689
No. 24-1879



IN THE
SUPREME COURT OF THE UNITED STATES

Anthony Jerome White — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Third Circuit Court of Appeals in Philadelphia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Anthony Jerome White
(Your Name)

FCI- Edgefield - P.O. Box 725
(Address)

Edgefield, SC 29824
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether Petitioner is eligible for Resentencing under the First Step Act of 2018 and §821 Amendment retroactivity?

Whether Petitioner's Rehaif Claim deserves a full review?

If Petitioner's Erlinger Claim in its language contradicted the Third Circuit's interpretation?

Why the District Court went against its decision when it granted Petitioner's First Step Act of 2019, Section 404 for crack cocaine disparity retroactive change in law?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

United States District Court for the Middle District
of Pennsylvania

RELATED CASES

United States v. White, 2011 U.S. Dist. LEXIS 38425

United States v. White, 2024 U.S. App. LEXIS 22288, 2024 WL 4024038 (3d cir. Pa. Sept. 3, 2024)

United States v. White, 2024 U.S. Dist. LEXIS 75067, 2024 LX118896

United States v. White, 2024 WL 1806426 (M.D. Pa., April 25, 2024)

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix C to the petition and is

☒ reported at 2024 U.S. App. LEXIS 22288; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 2024 U.S. Dist. LEXIS 75067; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 15, 2024.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 3, 2024, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

Petitioner filed a reduction of sentence under §3582(c)(1)(A) and (c)(2) for the First Step Act of 2018, Section 404 and Amendment 821 for the new Constitutional change in law as well as a Rehaif Claim. The Motion was granted in August of 2023. The government did not object until the Court ordered both parties memorandums.

The District Court ordered the Probation Office and Petitioner to present a memorandum and both parties had a deadline for the end of October 2023. The Probation Office Memorandum was supported by two separate theses of the sentence adjustments: (1) it introduced the §821 enhancement and to ~~keep the guideline~~ range at offense level 37, Category VI without finding a proper guideline sentence for the amount Petitioner was convicted of, which is 186.6 grams of crack cocaine, and (2) the Probation Office had adjusted Petitioner's sentence range to 262 to 327 months, which supports Petitioner's request for 240 months - only if the District Court would have accepted the offer; however, the District Court committed double jeopardy by denying Petitioner twice of the same reason, which is the sentencing factor §3553(a) without any regards to the Supreme Court ruling in Concepcion v. United States, 142 S.Ct. 2389, 213 L.3d 23 732 (2022). Courts are allowed to revise penalties for crack cocaine.

Petitioner's Conspiracy conviction is not a "serious drug offense" without an overt act, which did not support a 30 year sentence. However, there's no truth into the 5 to 40 range and

Petitioner's 35 year sentence without first identifying the 280 grams threshold change of crack cocaine of the Fair Sentencing Act of 2010 and the retroactive First Step Act of 2018. The guidelines did not support Petitioner's 5 to 40 range -- if Petitioner was moved from the maximum of 10 to life with the same 35 year sentence. Moreover, Petitioner's offense level would become level 26 with a new guideline range. (See Taylor v. United States 495 U.S. 575, 600-02, 110 S.Ct. 2143 [1990]). *See App F

First, the Court will determine whether Petitioner is eligible for relief pursuant to the First Step Act. (United States v. Shields, 48 F.4th 183, 2022 U.S. App. LEXIS 24719, 2022 WL 3971778 at *8 (3rd Cir. Sept. 1, 2022))("First, upon receiving the Motion for the First Step Act resentencing, the Court determines whether the Defendant is eligible for relief under the statute.") The First Step Act authorizes District Courts to reduce the prison sentences of defendants convicted of certain offenses involving crack cocaine. The Act allows a District Court to impose a reduced sentence "as if the revised penalties for crack cocaine in the Fair Sentencing Act of 2010 were in effect at the time the offense was committed." Concepcion v. United States, 142 S.Ct. 2389, 213 L. Ed. 2d 731 (2022).

Following Amendment 821 to the Sentencing Guidelines (to become effective November 1, 2023) which changes the procedure for calculating status points, Mr. White would be in criminal history category V. With a total offense level of 26 (PSR Memorandum at 3), his advisory guideline range for the grouped

offenses (Counts 1, 3, 4, and 5) as a non-career offender and a non-armed career criminal would be 110 to 137 months. Also, with the addition of the mandatory minimum term from the §924(c) conviction (Count 2), he would be facing 170 to 197 months. This range is well below the current mandatory minimum term of 240 months that Mr. White is asking this Court to impose. *See Apps E, F, and G.

The government and the District Court acknowledged Petitioner's Amendment 821 and failed to fix or correct the added point for which the Probation Office used to enhance Petitioner's criminal history points and placed Petitioner in Category VI instead of category V. The Third Circuit Court did not view this matter correctly and stated Petitioner did not cite this matter in his Sentencing Memorandum, but Petitioner did raise this matter and it was cited. (See Appendix C and Appendix D).

Also, depending on a potential ruling from the Supreme Court, Petitioner's prior drug offenses may not qualify as predicates for career offender purposes. If he is not an armed career criminal or career offender, Section 4B1.1 and 4B1.4 would not apply and his guideline range would be substantially reduced.

Petitioner had 10 criminal history points based on prior convictions. He received 2 status points because he was on probation with the Adams County Adult Probation Office at the time of the offense and he received 1 point because he committed the offense less than two years after release from imprisonment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

On August 3, 2010, the Fair Sentencing Act, Pub. L. No. 111-220, 124 Stat. 2372 (2010), was passed. It is self-described as "an act to restore fairness to Federal cocaine sentencing". It reached into the 1986 Controlled Substances Act and changed statutory penalties by increasing the quantity of crack cocaine that would trigger a mandatory minimum sentence, whereas the Controlled Substances Act mandated a minimum sentence of five years for possession with intent to distribute or distribution of 5 grams or more of crack cocaine. Now, the offense had to involve 28 grams or more. The triggering quantity of crack cocaine for a mandatory ten-year sentence was increased from 50 to 280 grams. This reduced the sentencing disparity between powder and crack cocaine from 100:1 down to 18:1.

Integral to the Commission's process of implementation is the interplay between the Federal Sentencing Guidelines, specifically the Drug Quantity Table, U.S. Sentencing Guidelines Manual §2D1.1(c) (2018), and the statutory penalties for drug offenses. As the United States Supreme Court noted in United States v. Dorsey, 567 U.S. 260, 132 S.Ct. 2321, 183 L.Ed. 2d 250 (2012), the "entire set of crack and powder cocaine offense levels" §2D1.1 was adopted by using the two five and ten-year minimum amounts in the 1986 Controlled Substances Act "as reference points and then extrapolating from those two amounts upward and downward to set proportional offense levels for other drug amounts". Id. at 268 (citing Kimbrough v. United States, 552 U.S. 85, 97, 128 S.Ct. 558, 169 L.Ed 2d 481 [2007]).

Therefore, consistent with the Congressional mandate in the Fair Sentencing Act, the Commission adopted amendment 750 that assigned level - base offense level - for the new trigger amounts of 28 grams and 280 grams of crack, which the Commission made retroactive. Then, again in 2014, the Commission adopted Amendment 782, which further reduced by two levels the base offense levels assigned to many drug quantities (known colloquially as the "drug minus two" Amendment), and it made those changes retroactive as well. According to the Commission, "Amendment 782 revises the guidelines applicable to drug trafficking offenses by changing how the base offense levels in the Drug Quantity Table in §2D1.1... incorporate the statutory mandatory minimum penalties for such offenses". U.S. Sentencing Guidelines Manual supp. to app. C, Amend. 782, cmt (2018).

Direction on applying the Amendments retroactively was set forth in a policy statement in the guidelines, U.S. Sentencing Guidelines Manual §1B1.10, requiring that the mechanics of changing sentences already reduced to judgment be consistent with the provisions of 18 U.S.C. §3582(c)(2). In determining whether and to what extent a defendant would receive a sentence reduction, §1B1.10(b) directs that "the court shall substitute only the Amendments listed in subsection (d), a list of Amendments that includes (2), 750 and 782 for the corresponding guideline provisions that were applied when the defendant was sentenced, and shall leave all other guideline application decisions unaffected". If the amended base level attributable to the drug offense did not lower a sentenced defendant's overall

guidelines range, then sentencing relief would not be available; also, any sentence reduction would not constitute a full resentencing.

According to application notes to §1B1.10(a), "a reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. §3582(c)(2) and is not consistent with this policy statement if: (i) none of these Amendments listed in subsection (d) are applicable to the defendant; or (ii) an Amendment listed in subsection (d) is applicable to the defendant, but the Amendment does not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g. a statutory mandatory minimum term of imprisonment)." Assuming eligibility "consistent with 18 U.S.C. §3582(c)(2), the Court shall consider the factors set forth in U.S.C. §3553(a) in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within limits described in subsection (b)". Next, Petitioner argues that the Court should grant him a variance under §3553(a) from his amended guideline range of 262-327 months imprisonment. *For support regarding Petitioner's request for relief with Petitioner's presence, for consideration of the §3553(a) factors, Petitioner cites a recent case decided in this district, namely, United States v. Rhines, No. 4:01-CR-310, Doc. 355, 2019 U.S. Dist. LEXIS 115868 at *4 (M.D. Pa. June 3, 2019) (Jones, J) ("In this Court's view, the only appropriate way to thoroughly evaluate Rhines' characteristic through the prism of section 3553(a) is to

have him appear in open court and provide him with an opportunity to fully allocute"). Petitioner cites to other cases as well. See United States v. Wirsing, 943 F.3d 175 (2019); including United States v. Rose, 379 F.Supp 3d 223, 2019 U.S. Dist. LEXIS 92584, 2019 WL 2314479 (S.D.N.Y May 24, 2019).

Petitioner cursorily alludes to the First Step Act and its purported effect on the definition of "serious drug offense" as it appears in Section 924(e)(2) of the ACCA. (citing 21 U.S.C. §802). Our Court of Appeals has already rejected the notion that the First Step Act changed the meaning of that phrase. See United States v. Winn, No. 20-1477, 2022 U.S.App. LEXIS 5759, 2022 WL 636633, at *4 (3d Cir. March 6, 2022). The First Step Act "modified the predicate offense for a different sentencing enhancement under 21 U.S.C. §841(b)." That other enhancement "increases the sentences of certain offenders who previously committed a 'serious drug felony', defined as an offense under Section 924(e)(2)- that is, a 'serious drug offense' or 'violent felony' under the ACCA- that also meets two additional requirements. In other words, the First Step Act "burrowed" the phrase "serious drug offense" from the ACCA and "combined it with requirements to establish the new 'serious drug felony' term" -it "did not change the meaning of a 'serious drug offense' under the ACCA." Petitioner's state-law convictions are considered serious drug offenses without applying 21 U.S.C. §802.

REASONS FOR GRANTING THE PETITION

Petitioner's Motion for a Sentence Reduction under 18 U.S.C. §3582(c)(1)(A) and (c)(2); also the §821 retroactive Amendment change in law under the First Step Act of 2018, Section 404(b). The Fair Sentence Act increased the threshold to 280 grams or more of such a substance. The District Court in United States v. Brookins, 2019 U.S. Dist. LEXIS 127457, "Brookins is entitled to a plenary or limited resentencing under the First Step Act". See United States v. Fredrick, 2020 U.S. Dist. LEXIS 17466, "A reduction of this degree strikes the proper balance in applying the §3553(a) factors and imposes a sentence that is sufficient but not greater than necessary to achieve the goals of sentencing". Even after the enactment of the First Step Act, there exists a disparity in the governing statutes and sentencing guidelines for crimes involving powder cocaine and crack cocaine. If Petitioner's crime involved powder cocaine, then he would be subjected to the statutory penalties set forth in 21 U.S.C. §841(b)(1)(C), which does not provide for a mandatory minimum sentence. Petitioner, under §841(b)(1)(C), would be subjected to a statutory maximum term of imprisonment of thirty (30) years and a term of supervised release of six (6) years. Petitioner's offense level under the guidelines for powder cocaine would be 34, pursuant to U.S.S.G. §4B1.1(b), and his criminal history category would remain VI. The applicable guideline range for imprisonment would, therefore, be 262 months to 327 months (as opposed to 360 months to life). The base offense level stays the same, and the threshold of the Fair Sentencing Act of 2010 had been increased to 280 grams; Petitioner was not convicted of 280

grams of crack cocaine based on statements made by witnesses. See Factfinding Memorandum. Appx D

Petitioner is aware that the Pennsylvania drug statute is ten years under C.S. Pa. Section 780-115 for recidivist violation. The term recidivist in the violation of Pa. §780-113(a)(30) has a drug table for prior convictions of drug crimes and United States v. Abbott, 748 F.3d at 158.2. This would disqualify the conviction as a predicate offense under the ACCA since the maximum is not ten years. See Appendix A, B, and C.

As the United States Supreme Court noted in United States v. Dorsey, 567 U.S. 260, 132 S.Ct. 2321, 183 L.Ed. 2d 250 (2012), the "entire set of crack and powder cocaine offense levels" §2D1.1 was adopted by using the two five and ten-year maximum amounts in the 1986 Controlled Substances Act "as reference points and then extrapolating from those two amounts upward and downward to set proportional offense levels for other drug amounts". Id. at 286 (citing Kimbrough v. United States, 552 U.S. 85, 97, 128 S.Ct. 558, 169 L.Ed. 2d 481 [2007])). See Appendix D

In considering whether to reduce a sentence under Section 404 and by how much a District Court must consider intervening changes in law or fact that are raised by the parties. Concepcion, 142 S.Ct. at 2404 (2022). For example. a Court should consider post-sentencing developments such as rehabilitation. See United States v. Shields, 48 F.4th 183, 190 (3rd Cir. 2022). See C.F. Peppers V. United States, 562 U.S. 476, 491 (2011). And the Court should make a new assessment of the sentencing factors under 18 U.S.C. §3553(a). See Murphy, 998 F.3d at 555.

The Supreme Court has the authority to reversed and remanded the Petitioner's certiorari based on the fact the First Step Act of 2018, Section 404(b) for §841 and §846 does not preclude Petitioner from a reduction of sentence in light of the new retroactive change in law which gives Petitioner a new offense level of 34 with a guidelines range of 262 to 327 months imprisonment if Petitioner faced the same charges today, the guidelines range could not remain the same. See United States v. Shield, 2019 U.S. Dist. LEXIS 114630. The Supreme Court should reverse this case with regards to the change in the threshold levels, the former being 50 grams, the latter being now 280 grams, the relevant change, a reduction in the Sentencing Level Range, which creates a disparity between the original Level, and this new, lower Level. That remand should be with instructions from this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Anthony Jerome White

Date: February 28, 2026