

20-5904 TERRY V. UNITED STATES

DECISION BELOW: 828 Fed.Appx. 563

LOWER COURT CASE NUMBER: 20-10482

QUESTION PRESENTED:

Section 404 of the First Step Act of 2018 made the Fair Sentencing Act of 2010 retroactive. Section 404 authorized federal district courts to impose a reduced sentence for anyone with a “covered offense.” Pub. L. No. 115-391, 132 Stat. 5194,

§ 404(b). Congress defined a “covered offense” as “a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 . . . that was committed before August 3, 2010.” § 404(a).

Section 2 of the Fair Sentencing Act of 2010 modified 21 U.S.C. § 841 by raising the crack-cocaine quantities that determine three tiers of penalties in 21 U.S.C.

§ 841(b)(1). For the top-tier range of 10-years-to-life in § 841(b)(1)(A), Section 2 raised the threshold from 50 to 280 grams of crack. And, for the mid-tier range of 5-to-40- years in § 841(b)(1)(B), Section 2 raised the threshold from 5 to 28 grams of crack.

The bottom-tier range of 0-to-20-years in § 841(b)(1)(C) applies to offenses not subject to the top- or mid-tier ranges in §§ 841(b)(1)(A) or (b)(1)(B). Section 2 of the Fair Sentencing Act did not modify the text of § 841(b)(1)(C). But by raising the quantity threshold in § 841(b)(1)(B)(iii) from 5 grams to 28 grams of crack, it had the effect of increasing § 841(b)(1)(C)’s upper boundary from 5 grams to 28 grams of crack.

The question presented is:

Whether pre-August 3, 2010 crack offenders sentenced under 21 U.S.C.

§ 841(b)(1)(C) have a “covered offense” under Section 404 of the First Step Act.¹

¹ This question is also presented in *Birt v. United States*, Sup. Ct. No. 20-291 (pet. for cert. filed Sept. 1, 2020).

ORDER OF MARCH 19, 2021

THE CASE IS REMOVED FROM THE CALENDAR FOR THE APRIL 2021 ARGUMENT SESSION. ADAM K. MORTARA, ESQUIRE, OF CHICAGO, ILLINOIS, IS INVITED TO BRIEF AND ARGUE THIS CASE, AS *AMICUS CURIAE*, IN SUPPORT OF THE JUDGMENT BELOW. THE CASE WILL BE RESCHEDULED FOR ARGUMENT THIS TERM.

CERT. GRANTED 1/8/2021