

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).

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CERT. GRANTED 1/8/2021