

No. 20-6075

IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

ALEJANDRO SALINAS GARCIA,

Appellant.

On Appeal from the United States District Court
For the Western District of North Carolina (5:09-CR-00025-KDB-DCK)

OPENING BRIEF

Daniel S. Harawa
Counsel of Record

Christopher Charnetsky
Joanna Johnston
Christian Rose
Student Counsel

Counsel for Appellant

WASHINGTON UNIVERSITY
SCHOOL OF LAW
Appellate Clinic
One Brookings Dr.
Campus Box 1120
St. Louis, MO 63130
314-935-4689
dharawa@wustl.edu

TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Statement of Jurisdiction.....1

Statement of the Issue1

Statement of the Case.....2

 I. Introduction2

 II. Factual Background.....4

 III. Procedural History.....8

Summary of the Argument.....10

Argument.....11

 I. Mr. Garcia is entitled to Relief under the First Step Act Because He Was
 Convicted of a Covered Cocaine Base Offense and Never Received the
 Benefit of the Fair Sentencing Act.....14

 A. Mr. Garcia was convicted of a “covered offense” because the
 statutory penalties for the amount of cocaine base involved in his offense
 were modified by the Fair Sentencing Act.14

 B. The District Court erred in denying Mr. Garcia’s motion for
 resentencing under the First Step Act given that Mr. Garcia has not
 received the benefit of the Fair Sentencing Act.....18

Conclusion24

Request for Oral Argument.....24

Certificate of Compliance25

Certificate of Service26

TABLE OF AUTHORITIES

Cases

<i>Dorsey v. United States</i> , 567 U.S. 260 (2012).....	passim
<i>Kimbrough v. United States</i> , 552 U.S. 85 (2007).....	11
<i>United States v. Allen</i> , 716 F.3d 98 (4th Cir. 2013).....	13
<i>United States v. Bullard</i> , 645 F.3d 237 (4th Cir. 2011).....	2, 4, 5, 20
<i>United States v. Byers</i> , 801 F. App’x 134 (4th Cir. 2020) (per curiam).....	18
<i>United States v. Chambers</i> , 956 F.3d 667 (4th Cir. 2020).....	12, 18
<i>United States v. Ferguson</i> , No. 5:10-CR-13, 2019 WL 3557888 (W.D. Va. Aug. 5, 2019)	19
<i>United States v. Gravatt</i> , 953 F.3d 258 (4th Cir. 2020).....	4, 16, 17, 21
<i>United States v. Grey</i> , No. DKC 08-0462, 2020 WL 1890537 (D. Md. Apr. 16, 2020)	19
<i>United States v. Holmes</i> , 806 F. App’x 206 (4th Cir. 2020) (per curiam)	18
<i>United States v. James</i> , 806 F. App’x 214 (4th Cir. 2020) (per curiam).....	18
<i>United States v. Landrum</i> , 809 F. App’x 154 (4th Cir. 2020) (per curiam)	18
<i>United States v. Mann</i> , 709 F.3d 301 (4th Cir. 2013).....	22
<i>United States v. McKenzie</i> , 805 F. App’x 223 (4th Cir. 2020) (per curiam)	18
<i>United States v. Segers</i> , 271 F.3d 181 (4th Cir. 2001)	13
<i>United States v. Welch</i> , No. 7:10-CR-0054-008, 2019 WL 2092580 (W.D. Va. May 13, 2019).....	19
<i>United States v. Winter</i> , 803 F. App’x 715 (4th Cir. 2020) (per curiam).....	18
<i>United States v. Wirsing</i> , 943 F.3d 175 (4th Cir. 2019).	12, 16, 18, 21

Statutes

18 U.S.C. § 37421

21 U.S.C. § 841(b)(1)(A)..... passim

21 U.S.C. § 841(b)(1)(B). 4, 15, 21

21 U.S.C. § 846.....2

28 U.S.C. § 12911

Anti-Drug Abuse Act, Pub. L. No. 99-570, 100 Stat. 3207 (1986)..... 10, 11, 12, 20

Fair Sentencing Act, Pub. L. No. 111-220, 124 Stat. 2372 (2010). passim

First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018) passim

Other Authorities

Barack Obama, *The President’s Role in Advancing Criminal Justice Reform*, 130 Harv. L. Rev. 811 (2011).....11

Press Release, White House Off. of Commc’ns, President Donald J. Trump Is Committed to Building on the Successes of the First Step Act (Apr. 1, 2019)22

Press Release, White House Off. of Commc’ns, Remarks by President Trump at Signing Ceremony for S. 756 “The First Step Act” (December 21, 2018). 13, 23

STATEMENT OF JURISDICTION

On April 29, 2019, Alejandro Salinas Garcia filed a Motion for Reduced Sentence Pursuant to the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, in the United States District Court for the Western District of North Carolina. The District Court entered its order denying the motion on November 4, 2019. Mr. Garcia moved for reconsideration and moved to reopen the time in which to file an appeal on December 23, 2019. The District Court denied reconsideration but granted the motion to reopen the time to file an appeal on December 30, 2019. Mr. Garcia noted his appeal on January 10, 2020. This Court has jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

STATEMENT OF THE ISSUE

- I. Did the District Court incorrectly decide that Mr. Garcia was sentenced in accordance with the Fair Sentencing Act, and was therefore ineligible for relief under the First Step Act, by looking only at his sentencing date, when the record demonstrates that the Sentencing Court did not consider how the Fair Sentencing Act lowered the statutory penalty range for the amount of cocaine base involved in Mr. Garcia's offense?

STATEMENT OF THE CASE

I. Introduction

In December 2009, Alejandro Salinas Garcia was charged with conspiracy to distribute and possess with intent to distribute five kilograms of cocaine, fifty grams of cocaine base or crack cocaine, and one thousand kilograms of marijuana pursuant to 21 U.S.C. §§ 841(b)(1)(A) and 846. (JA at 19.)¹ At the time of the offense, the statutory penalty range based on the charged amount of cocaine base was ten years to life.

In August 2010, Congress passed the Fair Sentencing Act to reduce crack and powder cocaine sentencing disparities. Pub. L. No. 111-220, 124 Stat. 2372 (2010). As relevant here, the Fair Sentencing Act lowered the statutory penalty range for Mr. Garcia's offense based on the amount of charged cocaine base to five to forty years. But shortly after its passage, this Court held that the Fair Sentencing Act did not apply to offenses, like Mr. Garcia's, which were committed before its enactment. *See United States v. Bullard*, 645 F.3d 237, 247 (4th Cir. 2011). Consequently, when U.S. Probation submitted Mr. Garcia's Presentence Investigation Report ("PSR") in 2011, it did not consider the Fair Sentencing Act's effect on the statutory penalties pertinent to Mr. Garcia. Six months before sentencing, though, the

¹ Citations to "JA" are to the Joint Appendix. Citations to "JSA" are to the Joint Sealed Appendix.

Supreme Court decided *Dorsey v. United States*, which held that the Fair Sentencing Act *does* apply to defendants who committed a cocaine base offense before the Act went into effect but who were sentenced after its effective date in 2010—like Mr. Garcia. 567 U.S. 260, 281 (2012). However, U.S. Probation did not submit a revised PSR reflecting this change in the law, and neither the Sentencing Court² nor the Government recognized this change on the record. Thus, when the Sentencing Court adopted the PSR “for all purposes of sentencing” and imposed a life sentence without incorporating *Dorsey*’s mandate, it did not sentence Mr. Garcia in accordance with the Fair Sentencing Act. (JA at 128–29.)

In December 2018, Congress passed the First Step Act, which applied the Fair Sentencing Act to all defendants who had not received the Fair Sentencing Act’s benefits. Pub. L. No. 115-391, 132 Stat. 5194 (2018). As a defendant who had not already benefited from the Fair Sentencing Act, Mr. Garcia moved to reduce his sentence under the First Step Act. The District Court denied the motion, assuming that because Mr. Garcia was sentenced after 2010, he must have received the benefit of the Fair Sentencing Act. Mr. Garcia now appeals.

² Judge Richard L. Voorhees (the “Sentencing Court”) sentenced Mr. Garcia in 2012. Judge Voorhees then assumed senior status on August 31, 2017. Subsequently, Judge Kenneth D. Bell (the “District Court”) was assigned Mr. Garcia’s case.

II. Factual Background

In May 2009, Mr. Garcia was indicted for conspiring to distribute powder cocaine (five kilograms) and marijuana (one thousand kilograms). (*Id.* at 19.) A grand jury returned a superseding one-count indictment in December 2009, which added cocaine base (fifty grams) to the drug conspiracy. (*Id.* at 20.) On February 11, 2010, Mr. Garcia pleaded guilty to the superseding indictment. (*Id.* at 27.)

Between Mr. Garcia's guilty plea in early 2010 and his sentencing in 2012, the Fair Sentencing Act became law on August 3, 2010. Pub. L. No. 111-220, 124 Stat. 2372 (2010). The Fair Sentencing Act reduced the statutory mandatory minimums and maximums for certain crack cocaine offenses to rectify the one hundred-to-one sentencing disparity between powder cocaine and cocaine base offenses. *Id.* The Fair Sentencing Act lowered both the minimum and maximum sentence Mr. Garcia could have received for conspiring to distribute fifty grams of cocaine base. *Id.* Before the Fair Sentencing Act, the minimum sentence Mr. Garcia could have received based on amount of cocaine base was ten years in prison and the maximum was life in prison; after the Act, however, the minimum for the same amount of cocaine base was only five years in prison and the maximum sentence was capped at forty years. *See* 21 U.S.C. § 841(b)(1)(B); *United States v. Gravatt*, 953 F.3d 258, 261 (4th Cir. 2020) (describing how the Fair Sentencing Act reduced the statutory ranges for cocaine base offenses). But on May 6, 2011, this Court determined

that the Fair Sentencing Act did not apply to defendants whose crimes were committed before the Fair Sentencing Act's enactment and yet were sentenced after the Act became law. *United States v. Bullard*, 645 F.3d 237–49 (4th Cir. 2011). Thus, under the reasoning of *Bullard*, the Fair Sentencing Act would not have applied to Mr. Garcia.

In September 2011, eighteen months after Mr. Garcia pleaded guilty, U.S. Probation finalized Mr. Garcia's PSR. (JSA at 2.) In recognition of Mr. Garcia's extensive cooperation and swift guilty plea, the Government agreed that the PSR would reflect that he accepted responsibility for his crime.³ Consistent with Fourth Circuit precedent at the time the PSR was prepared, there was no mention of the Fair Sentencing Act in the PSR.

In the interim between the PSR's finalization and Mr. Garcia's sentencing, the Supreme Court decided *Dorsey v. United States*. 567 U.S. 260 (2012) (decided June 21, 2012). *Dorsey* held that, contrary to this Court's holding in *Bullard*, the Fair Sentencing Act applied to any defendant sentenced after its promulgation. *Id.* at 281. Thus, *Dorsey* mandated that Mr. Garcia's cocaine base offense carry a reduced statutory range under the Fair Sentencing Act. *See id.* Despite this, between the Court

³ (*Id.* at 5–6.) For an example of Mr. Garcia's cooperation with the Government, see the extensive and detailed interviews that Mr. Garcia participated in with law enforcement. (JA at 52 (reports of investigations).)

deciding *Dorsey* in June and Mr. Garcia’s sentencing hearing in December, the PSR was never updated to reflect this substantive change in the law. (*See generally* JA at 86–146 (sentencing transcript).)

Mr. Garcia was sentenced on December 5, 2012. (JA at 76.) The Sentencing Court adopted the PSR “for all purposes of sentencing.”⁴ Consistent with the PSR, the Sentencing Court did not mention *Dorsey* or the Fair Sentencing Act at the sentencing hearing. Without considering the reduced statutory range for Mr. Garcia’s cocaine base offense, the Sentencing Court determined the guidelines range for Mr. Garcia’s offense was three hundred and sixty months to life. (*Id.* at 129, 132.) The Court then sentenced Mr. Garcia to life in prison.⁵

⁴ (JA at 128–29.) The Sentencing Court did deviate in one critical respect from the PSR—it refused to adjust Mr. Garcia’s offense-level downwards for acceptance of responsibility. The Sentencing Court refused because Mr. Garcia, who appeared pro se at his sentencing hearing, argued he was a sovereign citizen and therefore not subject to the court’s jurisdiction. (*Id.* at 131–32, 140.) What the Sentencing Court did not know is that Mr. Garcia had been given fraudulent “legal advice” from an attorney in the form of a twenty-five-page document that cost Mr. Garcia and several other defendants thousands of dollars that recommended this strategy. (*See id.* at 150–51, 191.) The North Carolina State Bar sent a warning letter to the attorney who created and sold the document to Mr. Garcia. (*Id.* at 194–95.) The State Bar also informed Mr. Garcia that the matter had been referred to the local district attorney for potential criminal prosecution. (*Id.*) Once Mr. Garcia discovered that the legal advice he received was fraudulent, he sent a letter apologizing to the Sentencing Court for his argumentative posture at sentencing. (*Id.* at 148.)

⁵ While Mr. Garcia was sentenced to life in prison, the sentences of Mr. Garcia’s coconspirators—who were all convicted of the same or nearly the same offense as Mr. Garcia—ranged from one hundred and eight months to two hundred and ten months in prison, with an average of one hundred and forty months. (*See* JA

While incarcerated, Mr. Garcia has consistently worked at rehabilitating himself.⁶ He completed his GED. (JA at 253–56.) He has earned numerous certificates in several different fields, from financial management to mechanical technology, and has even taught and assisted with courses for his fellow inmates. (*See id.* at 305; *see generally id.* at 224–84.) He has received positive feedback from many

at 34 (Mary Elizabeth Bailey Williams: one hundred and eight months), 41 (Anderson Contreras: one hundred and twenty months), 29 (Timothy Allen Grate: one hundred and twenty-one months), 65 (Juan Pablo Lopez Ugalde: one hundred and forty-one months), 71 (Kenneth Lee Travis: two hundred and ten months months).)

⁶ (*See, e.g.*, JSA at 36.) The Supplement to the PSR that U.S. Probation prepared in 2016 for the Sentencing Court to consider with Mr. Garcia’s Amendment 782 motion reads:

The defendant has received no disciplinary actions while in custody.

The defendant has participated in the following educational programs or work assignments while incarcerated: Psych Self Study; AIDS Awareness; RPP Orientation; Skills for Staying Free; MSO Word 2; MSO Word 1: Keyboarding; Violence in the Workplace; Personal Finance; Anger Management –Workplace; Basic Computer Skills; Defining Issues of Problems; Conflict management; Grammar; Effective Time Management; Basic First Aid; Security Awareness; Fitness Primer; Emotional Intelligence; Nutrition; Balancing Work and Family; Planning and Controlling Budgets; Critical Thinking; Financial Basics; Decision Making; Group Decision Skills; Financial Performance; Preparing for Release; GED; Connecting with Humanity; Fuel Injection Engines; Reentry Clerk-Library; Library; Health Service Orderly; Career Resources; Psychology; Education; Dining Room; Food Service; Chapel; Recreation Yard; Recreation; Drug Education; and GED earned in BOP.

(*Id.*)

prison staff, who have praised his model behavior and his “genuine desire to change . . . and become a responsible citizen.” (*Id.* at 295.) His incarceration has even sparked an interest in the law and a desire to help those who are incarcerated navigate the law and protect them from fraudulent legal schemes. (*See id.* at 196–223.)

Indeed, four years ago, the Sentencing Court reduced Mr. Garcia’s sentence to reflect Amendment 782’s changes to the Sentencing Guidelines. (JA at 47.) The Sentencing Court reduced his sentence from life to three hundred and sixty months—the lowest available Guidelines sentence. (*See* JSA at 36.) By granting his unopposed motion, the Sentencing Court implicitly recognized the burgeoning turnaround Mr. Garcia had made in his life. However, in granting the reduction, the Sentencing Court still made no mention of the Fair Sentencing Act.

III. Procedural History

Following the passage of the First Step Act, on April 25, 2019, Mr. Garcia filed a motion to reduce his sentence, asserting that he “was sentenced for a covered offense” under the First Step Act and was “neither sentenced nor resentenced” under the Fair Sentencing Act. (JA at 307–15 (internal quotation marks omitted).) Mr. Garcia therefore argued that he was “eligible for resentencing” under the First Step Act and asked “that the Court impose a reduced sentence.” (*Id.* at 307.)

Without waiting for a response from the Government, the District Court denied Mr. Garcia’s motion. (*Id.* at 316–317.) It acknowledged Mr. Garcia pleaded

guilty to “conspiracy to possess with intent to distribute cocaine, cocaine base and marijuana”—implicitly finding it was a covered offense under the First Step Act. (*Id.* at 316.) But the District Court nevertheless held that Mr. Garcia was ineligible for relief, reasoning that because Mr. Garcia was sentenced in 2012, he must have already been sentenced in accordance with the Fair Sentencing Act. (*Id.*)

On January 10, 2020, Mr. Garcia timely noted his appeal. (*Id.* at 318.) He argued that he is entitled to relief under the First Step Act, which “grants sentencing courts the broad discretion to reduce sentences imposed under the excessively harsh penalty structure which Congress has now renounced.” (*Id.* at 322.) This Court appointed counsel and requested briefing on the issue of whether Mr. Garcia “was sentenced under the Fair Sentencing Act and is therefore ineligible for First Step Act relief.” (*Id.* at 331.)

SUMMARY OF THE ARGUMENT

For the past decade, Congress and the courts have attempted to rectify the unfair crack-to-powder cocaine disparity created by the Anti-Drug Abuse Act that resulted in the prolonged mass incarceration of racial minorities. *See* Anti-Drug Abuse Act, Pub. L. No. 99-570, 100 Stat. 3207 (1986). The Fair Sentencing Act of 2010, *Dorsey v. United States*, and the First Step Act of 2018, were important steps to bringing this unfair sentencing scheme to an end. Yet Mr. Garcia was sentenced under the Anti-Drug Abuse Act, despite the fact that at the time of his sentencing, he was eligible to be sentenced under the Fair Sentencing Act.

Defendants are eligible for First Step Act relief if they were convicted of a covered cocaine base offense and have not previously benefited from the Fair Sentencing Act. Mr. Garcia is eligible for relief because he was convicted of a cocaine base charge that had its statutory range reduced by the Fair Sentencing Act, making it a “covered offense,” and he has not received any benefit from the Fair Sentencing Act. The First Step Act affords Mr. Garcia—who has turned his life around since being incarcerated—the opportunity to demonstrate he deserves to be resentenced.

ARGUMENT

In 1986, Congress passed the Anti-Drug Abuse Act. The Act created a one hundred-to-one powder-to-crack cocaine sentencing ratio the federal guidelines had to follow. For example, a defendant who faced a five-year mandatory minimum for possessing with intent to distribute five hundred grams of powder cocaine would face the same mandatory minimum for possessing with intent to distribute just five grams of cocaine base. 21 U.S.C. § 841(b)(1) (1986) (amended 2010). Punishing powder and crack cocaine so differently “resulted in excessive and unwarranted punishments that fell disproportionately on defendants of color.” Barack Obama, *The President’s Role in Advancing Criminal Justice Reform*, 130 Harv. L. Rev. 811, 827 (2011). Many, including the Federal Sentencing Commission and the law enforcement community, criticized the Anti-Drug Abuse Act, finding it “foster[ed] disrespect for and lack of confidence in the criminal justice system because of a widely-held perception that it promote[d] unwarranted disparity based on race.” *Kimbrough v. United States*, 552 U.S. 85, 98 (2007) (cleaned up) (quoting the United States Sentencing Commission’s Report to Congress on the federal sentencing policy toward cocaine base).

The Fair Sentencing Act of 2010 and the First Step Act of 2018 attempted to fix this broken sentencing scheme. Congress passed both acts to “restore fairness to Federal cocaine sentencing.” Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124

Stat. 2372 (2010); First Step Act of 2018 § 404(a)–(c), Pub. L. No. 115-391, 132 Stat. 5194 (2018). The Fair Sentencing Act raised the cocaine base amount that triggers the five-year mandatory minimum from five grams to twenty-eight grams, making the powder-to-crack ratio eighteen-to-one instead of one hundred-to-one. Fair Sentencing Act § 2. The 2010 Act also eliminated a mandatory minimum sentence for simple possession. *Id.* § 3. But the Fair Sentencing Act was not on its face retroactive, and therefore it did not apply to people who had already been sentenced under the Anti-Drug Abuse Act’s harsh sentencing regime.

To fix this, Congress passed the First Step Act, which “authorized the courts to provide a remedy for certain defendants who bore the brunt of a racially disparate sentencing scheme.” *United States v. Chambers*, 956 F.3d 667, 674 (4th Cir. 2020). The First Step Act fills “gaps” left by the Fair Sentencing Act. *United States v. Wirsing*, 943 F.3d 175, 179 (4th Cir. 2019). Specifically, it expands the Fair Sentencing Act’s reach to cocaine base offenses committed before August 3, 2010, and to all cocaine base offenses not sentenced “in accordance with the amendments made by Sections 2 or 3 of the Fair Sentencing Act of 2010.” First Step Act § 404(a), (c). The First Step Act again demonstrates that Congress “realized” the Anti-Drug Abuse Act’s “unfairness” and was another measure to “bring fairness to this system of sentencing.” Press Release, White House Off. of Commc’ns, Remarks by President Trump at Signing Ceremony for S. 756 “The First Step Act” (December 21, 2018)

(comments by Senator Chuck Grassley). Now, the First Step Act authorizes incarcerated persons who did not benefit from the Fair Sentencing Act to seek resentencing. And since the First Step Act's enactment, thousands of incarcerated people have successfully sought relief from their unnecessarily high sentences. *See* Press Release, U.S. Dep't of Justice, Department of Justice Announces the Release of 3,100 Inmates Under First Step Act, Publishes Risk and Needs Assessment System (July 19, 2019).

Mr. Garcia moved for a sentence reduction pursuant to the First Step Act. (JA at 37.) The District Court denied his motion, reasoning that since Mr. Garcia was sentenced after the Act's effective date, he must have already received the benefit of the Fair Sentencing Act. This court reviews a determination of eligibility under the First Step Act, including any questions of statutory interpretation, *de novo*. *See, e.g., United States v. Allen*, 716 F.3d 98, 106 (4th Cir. 2013) ("Whether the new threshold amount announced in the Fair Sentencing Act applied to [the defendant] is a question of law which we decide *de novo*."); *United States v. Segers*, 271 F.3d 181, 183 (4th Cir. 2001) (questions of statutory interpretation are reviewed *de novo*).

I. Mr. Garcia is entitled to Relief under the First Step Act Because He Was Convicted of a Covered Cocaine Base Offense and Never Received the Benefit of the Fair Sentencing Act.

- A. Mr. Garcia was convicted of a “covered offense” because the statutory penalties for the amount of cocaine base involved in his offense were modified by the Fair Sentencing Act.

To be eligible for relief under the First Step Act, defendants must have been convicted of a “covered offense” and not already sentenced in accordance with the Fair Sentencing Act. First Step Act § 404(a)–(c). If a defendant meets this criteria, Section 404(b) entitles a court to impose a new sentence: “A court that imposed a sentence for a covered offense may . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the covered offense was committed.” *Id.* § 404(b). Mr. Garcia’s drug conspiracy charge involved an amount of cocaine base for which the statutory penalties were modified by the Fair Sentencing Act—it is therefore a “covered offense” under the First Step Act. As such, he is eligible for a sentence reduction under the First Step Act.

A “covered offense” under the First Step Act refers to any crime which had its statutory penalty modified by the Fair Sentencing Act. *See* First Step Act § 404(a). The Fair Sentencing Act raised the amount thresholds for cocaine base necessary to trigger minimum and maximum sentences. Statutory penalties for different amounts of cocaine base are split into two categories, both of which were altered by the Fair Sentencing Act. The first, 21 U.S.C. § 841(b)(1)(A), the harsher of the two

categories, carries a sentencing range of ten years to life. The second, 21 U.S.C. § 841(b)(1)(B), carries a sentencing range of five to forty years. Before the Fair Sentencing Act, Section 841(b)(1)(A) was triggered when the indictment charged fifty grams or more of cocaine base, and Section 841(b)(1)(B) was triggered when the indictment charged five grams or more of cocaine base. The Fair Sentencing Act, however, increased the amount of cocaine base required to trigger the more severe Section 841(b)(1)(A): Where fifty grams of cocaine base used to be sufficient to trigger Section 841(b)(1)(A), that section now requires a minimum of two hundred and eighty grams of cocaine base.

The Statutes	Pre-FSA	Post-FSA	Sentencing Range
21 U.S.C. § 841 (b)(1)(A)	50+ grams	280+ grams	Ten years – life
21 U.S.C. § 841 (b)(1)(B)	5–50 grams	28–280 grams	Five – forty years

Mr. Garcia was convicted of conspiracy to distribute five kilograms of cocaine, fifty grams of cocaine base, and one thousand kilograms of marijuana. Before the Fair Sentencing Act, this amount of cocaine base would have carried a statutory range of ten years to life. But the Fair Sentencing Act raised the threshold amount of cocaine base required for that range to two hundred and eighty grams, so the fifty grams of cocaine base that Mr. Garcia was charged with carried a range of only five to forty years. 21 U.S.C. §§ 841(b)(1)(A)(iii), 841(b)(1)(B)(iii). Because the Fair Sentencing Act altered Mr. Garcia’s statutory penalty range based on the amount of

cocaine base involved in his offense, his offense is covered under the First Step Act. First Step Act § 404(a); *Wirsing*, 943 F.3d at 186 (“All defendants who are serving sentences for violations of 21 U.S.C. § 841(b)(1)(A)(iii) and (B)(iii), and who are not excluded pursuant to the expressed limitations in Section 404(c) of the First Step Act, are eligible to move for relief under that Act.”).

This Court’s recent decision in *United States v. Gravatt* makes clear that Mr. Garcia’s offense is covered under the First Step Act. 953 F.3d 258 (4th Cir. 2020). There, this Court held the First Step Act applies whenever the Fair Sentencing Act affects the statutory penalty range based on the amount of cocaine base involved in a charge. This is true even when the cocaine base is charged in tandem with other drugs that carry higher statutory ranges unaffected by the Fair Sentencing Act. *Id.* at 263–64.

Gravatt had been charged with conspiring to possess with intent to distribute five kilograms or more of powder cocaine and fifty grams or more of cocaine base. *Id.* at 263. The Government argued that Gravatt “was not eligible for a sentence reduction under the [First Step] Act,” given that the penalties for powder cocaine “were not reduced and independently support[ed] Gravatt’s sentence.” *Id.* at 262. The district court agreed with the Government and held that Gravatt was not eligible for relief under the First Step Act “because the crack cocaine aspect of the

dual-object conspiracy ultimately had no effect on his statutory penalty range.” *Id.* at 261.

Reversing the district court, this Court focused on the “basic criteria” of the First Step Act to hold that “nothing in the text” of the First Step Act supported the Government’s argument. *Id.* at 264. This Court reasoned that if “Congress intended the Act not to apply if a covered offense was combined with an offense that was not covered, it could have included that language.” *Id.* Thus, because “Gravatt’s sentence involved a covered offense” under the First Step Act, this Court ordered the district court to conduct a “substantive review” of his sentence to determine whether Gravatt was “entitled to relief.” *Id.*

Like Gravatt, Mr. Garcia meets the “basic criteria” of the First Step Act. *Id.* Mr. Garcia and Gravatt were charged with the same amount of drugs: five kilograms of powder cocaine and fifty grams of cocaine base. (JA at 20.)⁷ Thus, because the Fair Sentencing Act modified the statutory penalties for the amount of charged cocaine base—regardless of the sentence Mr. Garcia was eligible to receive based

⁷ Additionally, both Mr. Garcia and Gravatt had their sentences reduced below the high end of the statutory range through a 782 Amendment motion. *See Gravatt*, 953 F.3d at 261; (JA at 147). This, too, had no effect on Gravatt’s eligibility for relief under the First Step Act. *See Gravatt*, 953 F.3d at 261.

on any other drug—Mr. Garcia was convicted of a “covered offense” and is eligible for a reduced sentence under the First Step Act.⁸

- B. The District Court erred in denying Mr. Garcia’s motion for resentencing under the First Step Act given that Mr. Garcia has not received the benefit of the Fair Sentencing Act.

Because Mr. Garcia was convicted of a “covered offense,” the only bar to him obtaining First Step Act relief is Section 404(c)’s limitations. *See Wirsing*, 943 F.3d at 186. Section 404(c) “prevents the court from entertaining a motion made by someone who filed a prior First Step Act motion that was denied on the merits, or whose sentence was already imposed or reduced in accordance with section 2 and 3 of the Fair Sentencing Act.” *Chambers*, 956 F.3d at 672 (cleaned up).

The District Court denied Mr. Garcia’s motion because he was sentenced in December 2012, “well after the effective date of the Fair Sentencing Act.” (JA at

⁸ This Court has repeatedly reaffirmed *Gravatt*’s holding: When a defendant has been convicted of an offense involving drugs other than just cocaine base, but has not received the benefit of the Fair Sentencing Act, he is eligible for relief under the First Step Act. *See United States v. Byers*, 801 F. App’x 134 (4th Cir. 2020) (per curiam) (holding defendant was eligible for relief under First Step Act when convicted of an offense involving five kilograms of more of power cocaine and fifty grams or more of cocaine base); *United States v. McKenzie*, 805 F. App’x 223 (4th Cir. 2020) (per curiam) (same); *United States v. Winter*, 803 F. App’x 715 (4th Cir. 2020) (per curiam) (same); *United States v. Landrum*, 809 F. App’x 154 (4th Cir. 2020) (per curiam) (same); *United States v. James*, 806 F. App’x 214 (4th Cir. 2020) (per curiam) (same); *United States v. Holmes*, 806 F. App’x 206 (4th Cir. 2020) (per curiam) (holding defendant was eligible for relief under First Step Act when convicted of an offense that involved cocaine base, powder cocaine, and heroin).

316.) Thus, the court incorrectly assumed based on the sentencing date that Mr. Garcia was sentenced in accordance with the Fair Sentencing Act and therefore was ineligible for relief under the First Step Act.

The sentencing date alone is not dispositive for determining whether a defendant is eligible for relief under the First Step Act: Numerous defendants have received the benefit of the First Step Act despite being sentenced after August 3, 2010. *See, e.g., United States v. Grey*, No. DKC 08-0462, 2020 WL 1890537 (D. Md. Apr. 16, 2020) (First Step Act resentencing available to defendant sentenced in 2011); *United States v. Ferguson*, No. 5:10-CR-13, 2019 WL 3557888 (W.D. Va. Aug. 5, 2019) (same); *United States v. Welch*, No. 7:10-CR-0054-008, 2019 WL 2092580 (W.D. Va. May 13, 2019) (same). The defendants in these cases were resentenced under the First Step Act despite being sentenced in 2011 because they committed “covered offenses” and the record showed they did not receive the benefit of the Fair Sentencing Act. Contrary to the District Court’s opinion, the focus under the First Step Act is not the date of sentencing.

Instead, the correct question under the First Step Act is whether the sentence was imposed or has been reduced in accordance with the Fair Sentencing Act. *See* First Step Act § 404(c). The record proves Mr. Garcia was not sentenced in accordance with the Fair Sentencing Act.

Despite the fact that the Fair Sentencing Act altered the statutory penalties for the amount of cocaine base charged in Mr. Garcia’s offense, the Sentencing Court did not consider these changes. Yet it should have considered the Fair Sentencing Act based on the type of offense involved and the timing of prosecution. Mr. Garcia’s charge arose from conduct before 2010, when the Anti-Drug Abuse Act was still in effect. But he was sentenced in December 2012, after Congress had passed the Fair Sentencing Act and the Supreme Court made clear that the Fair Sentencing Act applies to anyone who was sentenced after 2010—regardless of when the crime was committed. *Dorsey*, 567 U.S. at 281. By the time Mr. Garcia was sentenced, the Fair Sentencing Act applied to him, but he did not receive its benefits.

The record is devoid of any reference to the Fair Sentencing Act. The PSR does not mention the Fair Sentencing Act. (JSA at 2–34.) The Statement of Reasons does not mention the Fair Sentencing Act. (*Id.* at 65–68.) The Sentencing Transcript does not mention the Fair Sentencing Act. (JA at 86–146.) Similarly, *Dorsey* is noticeably absent from the record. These omissions make sense in light of the fact that the PSR was written in 2011, before *Dorsey* was decided and while *Bullard* still controlled in the Fourth Circuit. But no supplement to the PSR was ever filed with the Sentencing Court highlighting *Dorsey*’s important change in the law. Thus, when the Sentencing Court adopted the PSR “for all purposes of sentencing,” the court did

not take into account that the Fair Sentencing Act now applied to Mr. Garcia. (*Id.* at 128–29.)

As confirmation that the Sentencing Court did not take into account the Fair Sentencing Act, the judgment entered against Mr. Garcia shows he was convicted of violating 21 U.S.C. § 841(b)(1)(A), when, after the Fair Sentencing Act, the fifty grams of cocaine base involved in his offense could only trigger § 841(b)(1)(B). *Compare* 21 U.S.C. § 841(b)(1)(A)(iii), *with* § 841(b)(1)(B)(iii). Moreover, there is no indication based on Mr. Garcia’s sentence that the Sentencing Court considered the Fair Sentencing Act given that the Court sentenced Mr. Garcia to life in prison when the maximum sentence under the Fair Sentencing Act based on the amount of cocaine base was forty years. *See* 21 U.S.C. § 841 (b)(1)(B)(iii). Therefore, the judgment also does not reflect any contemplation or application of the Fair Sentencing Act by the Sentencing Court.

Put simply, the record does not support the District Court’s erroneous conclusion that Mr. Garcia was sentenced in accordance with the Fair Sentencing Act. “Because [Mr. Garcia]’s sentence involved a covered offense under Section 404(a) and Section 404(c)’s limitations do not apply, the District Court should have reviewed [Mr. Garcia]’s motion on the merits.” *Gravatt*, 953 F.3d at 264.

This Court should reverse the judgment of the District Court and remand for a “substantive review” of Mr. Garcia’s sentence so the District Court can determine

whether Mr. Garcia’s sentence should be reduced pursuant to the First Step Act. *Id.*; *see Wirsing*, 943 F.3d at 184 (“[T]he First Step Act provides explicit permission for a court to modify a sentence.”).

* * *

Mr. Garcia, dedicated to improving himself and helping his peers, has shown he is the type of person who Congress, by passing the First Step Act, sought to grant a “second chance.” Press Release, White House Off. of Commc’ns, President Donald J. Trump Is Committed to Building on the Successes of the First Step Act (Apr. 1, 2019) (“Americans . . . can unite around prison reform legislation that will reduce crime while giving our fellow citizens a chance at redemption.”).

Eight years have passed since Mr. Garcia was sentenced to life in prison. He has “already served a substantial sentence” and turned his life around, proving he is poised for success upon his release. *United States v. Mann*, 709 F.3d 301, 307 (4th Cir. 2013) (holding that the district court did not abuse its discretion when reducing the defendant’s sentence, considering the defendant had “been a model prisoner, genuinely interested in rehabilitation”). Recognizing that education and practical skills are required for successful reentry, Mr. Garcia has earned his GED and countless learning certificates. He has modeled pristine behavior while incarcerated, lacking any sort of disciplinary record. Finally, Mr. Garcia understands the primacy of the law, and has sought to use his education to help others. (*See* JA at 295 (letter

from Mr. Garcia’s chaplain).) “[T]he miracle of life [is] not just in its beginning, but the capacity to begin again. It is that understanding[—]that belief that people can turn their lives around if given the proper environment and encouragement[—]that this legislation represents.” Press Release, White House Off. of Commc’ns, Remarks by President Trump at Signing Ceremony for S. 756 “The First Step Act” (December 21, 2018). The First Step Act provides Mr. Garcia the chance to prove his redemption.

This Court should hold that the District Court erred in determining Mr. Garcia was ineligible for relief under the First Step Act, and remand for further proceedings to allow the District Court to review Mr. Garcia’s sentence and determine whether it should be reduced.

CONCLUSION

For these reasons, this Court should reverse the District Court's denial of Mr. Garcia's motion to reduce his sentence and remand this case for further proceedings.



Daniel S. Harawa (Counsel of Record)
Christopher Charnetsky (Student Counsel)
Joanna Johnston (Student Counsel)
Christian Rose (Student Counsel)
WASHINGTON UNIVERSITY SCHOOL OF LAW
Appellate Clinic
One Brookings Dr.
Campus Box 1120
St. Louis, MO 63130
314-935-4689
dharawa@wustl.edu

REQUEST FOR ORAL ARGUMENT

Mr. Garcia respectfully requests that oral argument be granted in this case, pursuant to Rule 34(a) of the Federal and Local Rules of Appellate Procedure. The factual and legal issues presented in this case are sufficiently complex that oral argument would aid this Court in its decisional process.

CERTIFICATE OF COMPLIANCE

In accordance with Rule 32(a) of the Federal Rules of Appellate Procedure, undersigned counsel for appellant certifies that the accompanying brief is printed in Times New Roman 14-point font, and including footnotes, contains no more than 13,000 words. According to the word-processing system used to prepare the brief, Microsoft Word, the relevant sections of the brief under Rule 32(f) contain 5,614 words.



Daniel S. Harawa

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2020, I electronically filed the foregoing brief with the Clerk of the Court of the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the appellate CM/ECF system.



Daniel S. Harawa