

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

UNITED STATES

v.

TONY COLLINS,

Defendant.

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Case No. CCB-10-0336

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**MOTION FOR IMPOSITION OF A REDUCED SENTENCE  
PURSUANT TO SECTION 404 OF THE FIRST STEP ACT**

Defendant Tony Collins is serving a 160-month sentence for a nonviolent drug offense that did not involve a weapon. Pursuant to Section 404 of the First Step Act, Mr. Collins is eligible for imposition of a reduced sentence because he was convicted of a pre-August 3, 2010, violation of 21 U.S.C. § 841(b)(1)(A)(iii), the statutory penalties for which were modified in part by the Fair Sentencing Act (“FSA”). *See United States v. Wirsing*, 943 F.3d 175, 186 (4th Cir. 2019) (“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.”); *see also United States v. Gravatt*, -- F.3d --, 2020 WL 1327200, at \*4 (4th Cir. Mar. 23, 2020) (holding that the defendant’s conviction for conspiracy to possess with intent to distribute 50 grams of crack or more and 5 kilograms of powder cocaine or more is a “covered offense” under the First Step Act, even though the FSA “did not amend the penalties in 21 U.S.C. § 841(b)(1)(A)(ii) regarding powder cocaine”).

Mr. Collins respectfully requests that the Court exercise its discretion under the First Step Act to reduce his sentence to time served, which would effectively reduce his sentence by only nine months. The requested nine-month reduction would accomplish the purposes of sentencing set forth in 18 U.S.C. § 3553(a) and appropriately reflect that:

- (1) Mr. Collins no longer qualifies as a career offender and, even if he did, the requested sentence is commensurate with the average sentence imposed today in career-offender cases; and
- (2) Mr. Collins has used his time in the Bureau of Prisons (“BOP”) productively, completing residential drug abuse treatment and vocational training as a cook, and has a reentry plan in place.

### **BACKGROUND**

On June 16, 2010, prosecutors charged 22 individuals with conspiring to sell crack cocaine, powder cocaine, and heroin in the Gilmor Homes Housing Projects in Baltimore. *See* ECF No. 2. Of the 22 people initially charged, Mr. Collins was listed as the twentieth defendant. He was charged in one count of a 24-count Superseding Indictment with conspiracy to distribute and possess with intent to distribute 50 grams or more of crack cocaine, 5 kilograms or more of cocaine, and a detectable amount of heroin, in violation of 21 U.S.C. §§ 846 & 860 (Count One). *See* ECF No. 345.

On October 18, 2011, Mr. Collins pled guilty to Count One of the Superseding Indictment. *See* ECF No. 661. According to the plea agreement, between June 2009 and June 2010, Mr. Collins conspired with “a number of other individuals to distribute and possess with intent to distribute cocaine and cocaine base.” *Id.* ¶ 6. Mr. Collins “stipulate[d] the amount of drugs that was reasonably foreseeable to [him] and distributed in furtherance of the conspiracy was 5 KG of powder cocaine and 50 grams of cocaine base.” *Id.*

As set forth in the Presentence Report (“PSR”), Count One carried a base offense level of 32. PSR ¶ 12. Two levels were added because drugs were distributed within 1000 feet of Gilmor Homes. *Id.* The Probation Officer did not apply any role, firearm, or obstruction enhancements, resulting in an adjusted offense level of 32. PSR ¶¶ 13-17. However, because Mr. Collins had a prior conviction for robbery (incurred in 1999 when he was 18 years old) and two prior convictions for CDS possession

with intent to manufacture/distribute (incurred in 2003 and 2004 when he was between the ages of 22 and 23), the Probation Officer determined that Mr. Collins qualified as a career offender under U.S.S.G. § 4B1.1. PSR ¶ 22. The career-offender enhancement raised Mr. Collins' offense level from 34 to 37, and raised his criminal history category from V to VI. PSR ¶¶ 22, 38-39. Subtracting three levels for acceptance of responsibility, Mr. Collins had a final offense level of 34, which with a criminal history category VI, yielded an advisory guideline range of 262 to 327 months. PSR ¶ 53.

On February 2, 2012, the Court, accepting the parties' plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), imposed a sentence of 160-months incarceration, followed by 10 years of supervised release. ECF No. 751. Mr. Collins, who is currently detained at Volunteers of America in Baltimore, has a projected release date of December 19, 2020.

### **LEGAL ARGUMENT**

Mr. Collins is both eligible and deserving of sentencing relief. Before August 3, 2010, Mr. Collins committed a violation of 21 U.S.C. § 841(b)(1)(A)(iii), the statutory penalties for which were later modified in part by the FSA. A sentence of time served would: adequately reflect the seriousness of the offense; bring Mr. Collins' sentence more in line with the sentences that similarly-situated drug offenders now receive in this District; and be in keeping with the motivating principles behind the FSA and the First Step Act.

#### **I. Mr. Collins Is Eligible for a Reduced Sentence Pursuant to Section 404 of the First Step Act.**

Section 404 of the First Step Act, by its plain language, is broadly applicable to any defendant who was convicted of an offense (1) the statutory penalties for which "were modified by section 2 or 3 of the Fair Sentencing Act of 2010," (2) that was "committed before August 3, 2010" (the date the FSA took effect). First Step Act of 2018, S. 3747, 115<sup>th</sup> Cong. § 404(a) (2018). For these eligible defendants, the sentencing court "may, on motion of the defendant . . . 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). This authority to resentence pre-FSA crack defendants is limited only in two ways. First, the Court shall not entertain a motion for resentencing under Section 2 or 3 of the FSA if the defendant was already sentenced under Sections 2 and 3 of the FSA. *Id.* § 404(c). And second, the Court shall not entertain a motion made under Section 404 if a previous motion under Section 404 was, after the First Step Act was enacted, “denied after a complete review of the motion on the merits.” *Id.*

Interpreting the requirements of Section 404(a), the Fourth Circuit has held in a unanimous published opinion that the statute of conviction controls eligibility for First Step Act relief. *United States v. Wirsing*, 943 F.3d 175, 185 (4th Cir. 2019). In so doing, the court rejected the government’s argument that drug quantity is in any way relevant to “the First Step Act eligibility determination.” *Id.* As the court explained:

any inmate serving a sentence for pre-August 3, 2010 violations of 21 U.S.C. § 841(b)(1)(A)(iii) or (B)(iii)—both of which were modified by Section 2 of the Fair Sentencing Act—is serving “a sentence for a covered offense” and may seek a sentence reduction under the First Step Act.

*Id.* at \*8 (citation omitted). Thus, in *Wirsing*, the defendant was eligible for relief because “before August 3, 2010, he committed a violation of 21 U.S.C. § 841(b)(1)(A)(iii) or (B)(iii), and the statutory penalties for that statute were modified by Section 2 of the Fair Sentencing Act.” *Id.* at 186 (internal quotation marks omitted); *see also United States v. McDonald*, 944 F.3d 769, 772 (8th Cir. 2019) (holding that First Step Act eligibility is to be determined by the statute of conviction, not the quantity or type of drugs attributed to the defendant at sentencing); *United States v. Beamus*, 943F.3d 789, 791 (6th Cir. 2019) (per curiam) (holding that the defendant was eligible for First Step Act sentencing relief because “[h]e was convicted of an offense for which the Fair Sentencing Act modified the statutory penalty, and he has not received a reduction in accordance with that Act or lost such a motion on the merits”).

Relying on *Wirsing*’s “statute-of-conviction theory of eligibility,” *Wirsing*, 943 F.3d at 182, the Fourth Circuit held earlier this week in *United States v. Gravatt*, -- F.3d --, 2020 WL 1327200, at \*4 (4th

Cir. Mar. 23, 2020), that pre-August 3, 2010, offenses involving both crack cocaine and another drug “remain [] covered offense[s]” under the First Step Act—even if the other drug was charged in sufficient quantities to trigger the same mandatory-minimum penalty as the crack cocaine. In *Gravatt*, the issue was “whether a conspiracy that involves the distribution of 50 or more grams of crack cocaine, which is a ‘covered offense’ under the [First Step Act] because the penalties for it were modified by the [FSA], remains a covered offense if the conspiracy also charges distribution of powder cocaine, the penalties for which were not modified.” 2020 WL 1327200, at \*1. The court, answering in the affirmative, reasoned that there is “nothing in the text of the [First Step Act] requiring that a defendant be convicted of a single violation of a federal criminal statute whose penalties were modified by section 2 or section 3 of the [FSA].” *Id.* at \*4. “[D]eclin[ing] to expand the limitations crafted by Congress,” the court reaffirmed its holding in *Wirsing* that “[a]ll 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.” *Id.* at 3 (quoting *Wirsing*, 943 F.3d at 186).

Following the Fourth Circuit’s decisions in *Wirsing* and *Gravatt*, there is no question that Mr. Collins is eligible for a reduction in sentence under the First Step Act. Before August 3, 2010, he committed a violation of 21 U.S.C. § 841(b)(1)(A)(iii), the statutory penalties for which were modified in part by Section 2 of the FSA. At the time of his sentencing, a count of conviction alleging 50 grams of crack cocaine fell within § 841(b)(1)(A)(iii), which established a mandatory minimum of 10-years incarceration and a maximum penalty of lifetime incarceration. Today, under the FSA, a count of conviction alleging 50 grams of crack cocaine falls within § 841(b)(1)(B), which carries a mandatory minimum of 5-years incarceration and a maximum penalty of 40-years incarceration. Because Mr. Collins’ “sentence involved a covered offense under Section 404(a) and Section 404(c)’s limitations do not apply,” he is eligible for a sentence reduction. *Gravatt*, 2020 WL 1327200, at \*5.

**II. Applying the § 3553(a) Factors, the Court Should Exercise Its Discretion Under Section 404 to Reduce Mr. Collins' Sentence.**

Although Section 404 does not “require a court to reduce any sentence pursuant to this section,” *id.* § 404(c), the Court should exercise the discretion bestowed on it by Section 404(b) and reduce Mr. Collins' sentence to time served. As Your Honor previously concluded, the Court “should consider the factors set forth in 18 U.S.C. § 3553(a), including post-sentencing conduct, in ruling on a motion for sentence reduction where the defendant is eligible for relief under the First Step Act.” *United States v. Logan*, No. CCB-10-203, ECF No. 53 at 1 (D. Md. July 25, 2019) (citing *United States v. Rose*, 379 F. Supp. 3d. 223, 231 (S.D.N.Y. 2019), and *United States v. Mitchell*, 2019 WL 2647571, at \*7-8 (D.D.C. 2019)); *see also United States v. Brown*, No. ELH-00-0100, ECF No. 414 at 15 (D. Md. Mar. 16, 2020); *United States v. Trotman*, No. GLR-10-0266, ECF No. 285 at 2 (D. Md. Oct. 29, 2019); *United States v. Robinson*, No. PJM-02-0227, 2019 WL 3867042, at \*5 (D. Md. Aug. 15, 2019); *United States v. Turner*, No. TDC-06-0274, ECF No. 50 at 3-4 (D. Md. June 28, 2019); *see also* 164 Cong. Rec. S7753-01, S7756 (Dec. 18, 2018) (statement of Sen. Nelson) (“This legislation will allow judges to do the job that they were appointed to do—to use their discretion to craft an appropriate sentence to fit the crime.”).

As part of the § 3553(a) analysis, the Court can consider the penalties the defendant would face if prosecuted today in considering the need to avoid unwarranted sentencing disparities. *See United States v. Laurey*, No. JKB-06-0586, ECF No. 82 at 1, 3 (D. Md. Feb. 19, 2020); *United States v. Wesley*, No. JKB-10-0118, ECF No. 73 at 1 (D. Md. Feb. 18, 2020); *United States v. Smith*, No. DKC-98-0252, ECF No. 92 at 4 (D. Md. Feb. 14, 2020); *United States v. Watts*, No. PJM-06-036, ECF No. 114 at 7 (D. Md. Feb. 6, 2020); *United States v. Thompson*, No. CCB-09-0128, ECF No. 123 at 2 (D. Md. Jan. 16, 2020); *United States v. Branch*, No. CCB-05-016, ECF No. 174 at 1 (D. Md. Oct. 18, 2019); *Turner*, No. TDC-06-0274, ECF No. 50 at 3-4. Indeed, as the government has previously acknowledged, the First Step Act “places no limitations on what a court may consider in resentencing

a First Step Act-eligible defendant.” *United States v. Venev*, No. JKB-06-062, ECF No. 33, Gov’t Resp. at 7 & n.6 (emphasis added); *see also United States v. Jacobs*, No. CCB-01-0050, ECF No. 241, Gov’t Resp. at 17 (“This Court should also consider the factors set forth in 18 U.S.C. § 3553(a) and deny relief under the First Step Act.”); *United States v. Bass*, No. RDB-08-0496, ECF No. 127, Gov’t Resp. at 10 (arguing that the defendant’s requested sentence “offend[s] ‘the need to avoid unwarranted sentencing disparities among’ similarly situated offenders under 18 U.S.C. § 3553(a)(6), and the need for a sentence to ‘reflect the seriousness of the offense,’ ‘promote respect for the law,’ and ‘provide just punishment for the offense’ under § 3553(a)(2)(A) . . . .”); *United States v. Jones*, No. CCB-08-086, ECF No. 1584, Gov’t Resp. at 8-9 (same); *United States v. Turner*, No. TDC-06-0274, ECF No. 48, Gov’t Resp. at 8 (same). The government’s concession is consistent with the Supreme Court’s decision in *Pepper v. United States*, 562 U.S. 476, 490 (2011), that a court must impose a new sentence “based on appropriate consideration of all of the factors listed in § 3553(a)” as they are now.

Conducting an analysis of the § 3553(a) factors here, the Court should consider that: (1) Mr. Collins no longer qualifies as a career offender, and even if he did, the modest sentence reduction is in keeping with current sentencing practices in career-offender cases; and (2) Mr. Collins’ conduct over nearly a decade in custody demonstrates that he poses a low risk of recidivism and is likely to excel on supervised release.

**A. A reduced sentence is warranted under § 3553(a) because Mr. Collins no longer qualifies as a career offender.**

Mr. Collins does not qualify for a career-offender enhancement today because his instant offense of conspiracy to distribute and possess with the intent to distribute crack and powder cocaine does not meet the definition of a “controlled substance offense” under U.S.S.G. § 4B1.2. In *United States v. Norman*, 935 F.3d 232, 239 (4th Cir. 2019), the Fourth Circuit squarely held that a § 846 offense does not qualify as a generic conspiracy under § 4B1.2(b). Thus, the career-offender guideline (§ 4B1.1) does not apply to Mr. Collins’ conspiracy conviction.

Without the career-offender enhancement, today Mr. Collins faces a base offense level of 32 under § 2D1.1, plus two levels because the offense involved a protected location. Subtracting three levels for acceptance of responsibility, Mr. Collins faces a final offense level of 29, which with a criminal history category V, yields a guideline range of 168 to 210 months.

Although Mr. Collins' sentence falls eight months below the low end of the drug-offender guideline range, it is not reflective of current sentencing trends. Today, the average sentence for crack-cocaine offenses is 78 months, *see* U.S. Sent'g Comm'n, *Quick Facts: Crack Cocaine Trafficking Offenses* (Fiscal Year 2018),<sup>1</sup> and the average sentence for powder-cocaine offenses is 74 months. *see* U.S. Sent'g Comm'n, *Quick Facts: Powder Cocaine Trafficking Offenses* (Fiscal Year 2018).<sup>2</sup> Mr. Collins is requesting a sentence that is more than 1.5 times these national averages. Indeed, even if the Court compared Mr. Collins' case to cases involving the career-offender enhancement, a slight sentence reduction is warranted. In career-offender cases, courts impose an average sentence of 150-months incarceration, which is the sentence Mr. Collins, whose release date is nine months away, is effectively requesting. *See* U.S. Sent'g Comm'n, *Quick Facts: Career Offenders* (Fiscal Year 2018).<sup>3</sup>

Mr. Collins is nearing the end of a lengthy sentence for a nonviolent drug offense that did not involve a weapon. The government cannot seriously dispute that the nearly ten years he has remained in continuous custody fails to provide adequate specific deterrence or ensure just punishment.

**B. A reduced sentence is warranted because Mr. Collins' conduct over the past ten years demonstrates that he is likely to succeed on supervised release.**

The Court should reduce Mr. Collins' sentence to reflect his productive use of his time in BOP custody. Mr. Collins "maintained steady employment in the commissary department" of FCI

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<sup>1</sup> Available at [https://www.usc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack\\_Cocaine\\_FY18.pdf](https://www.usc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY18.pdf).

<sup>2</sup> Available at [https://www.usc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Powder\\_Cocaine\\_FY18.pdf](https://www.usc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Powder_Cocaine_FY18.pdf).

<sup>3</sup> Available at [https://www.usc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick\\_Facts\\_Career\\_Offender\\_FY18.pdf](https://www.usc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Career_Offender_FY18.pdf).



Schuylkill. Exhibit 1 (BOP Progress Report). He also participated in a range of meaningful programming while incarcerated, including courses on fitness, alternatives to violence, Arabic, real estate, resume writing, residential wiring, and the culinary arts. *See id.* In 2012, he completed a 50-hour training on safe food handling and earned a ServSafe Certification. *See* Exhibit 2 at 2, 6 (BOP Certificates). In 2015, he completed a two-year apprenticeship as a cook. And, in 2017, Mr. Collins successfully completed the residential portion of the Bureau of Prisons' Residential Drug Abuse Treatment Program. *Id.* at 5. He completed follow-up services the following year. Exhibit 1.<sup>4</sup>

Upon his release, Mr. Collins intends to reside with his mother, Susie Davis, and sister, Tane'e Collins, both of whom affirm that he is ready for the opportunity of an earlier release date. *See* Exhibit 4 (Letter from Tane'e Collins); Exhibit 5 (Letter from Susie Davis). Mr. Collins will also have the support of Michelle Dale, the mother of his children, upon his return home. *See* Exhibit 6 (Letter from Michelle Dale).

Granting Mr. Collins' motion is consistent with the intent of the First Step Act to afford relief to defendants who were left serving excessive sentences after the enactment of the 2010 FSA. *See* Comm. on the Judiciary, 115th Cong., Fact Sheet, The First Step Act of 2018 (S.3649) – as introduced 2 (Nov. 15, 2018) (“This reform would bring sentences imposed prior to 2010 in line with sentences imposed after the Fair Sentencing Act was passed.”).<sup>5</sup> Particularly now in the midst of a national health crisis, the Court should honor congressional intent and reduce the incarcerated population

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<sup>4</sup> Balancing Mr. Collins' efforts to take full advantage of Bureau of Prisons' resources against his modest disciplinary record weighs in favor of the slight reduction of his sentence. Other than a 300-level infraction for being untidy, for which Mr. Collins lost no good-time credit, he has sustained only two other disciplinary infractions, from 2015 and 2013, respectively. *See* Exhibit 3 (BOP Disciplinary Record).

<sup>5</sup> Available at <https://www.judiciary.senate.gov/imo/media/doc/S.%203649%20First%20Step%20Act%20Summary%20-%20As%20Introduced.pdf>.

where at all possible to enable greater social distancing to mitigate against the spread of COVID-19 in correctional settings. The Court should order Mr. Collins' immediate release.

**CONCLUSION**

For the foregoing reasons, Mr. Collins respectfully requests that this Court reduce his sentence pursuant to Section 404 of the First Step Act and enter an amended judgment sentencing him to time served.<sup>6</sup>

Respectfully submitted,

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<sup>6</sup> Due to COVID-19 and the Governor's order to shelter in place as much as possible, undersigned counsel is unable to provide the Court with a courtesy copy of this pleading at this time.