

No. 21-690

In the Supreme Court of the United States

RODNEY EARL CANNADAY, AKA CAMP EARL,
PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 6) that the district court abused its discretion when it declined to grant petitioner a discretionary sentence reduction under Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5222. The petition for a writ of certiorari should be denied.

1. In 2008, petitioner pleaded guilty to possessing 50 grams or more of cocaine base (crack cocaine) and a quantity of oxycodone, in violation of 21 U.S.C. 841(a)(1). Judgment 1. The district court sentenced petitioner to 384 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals affirmed, 384 Fed. Appx. 253, and a petition for a writ of certiorari was dismissed pursuant to Rule 46 of the Rules of this Court, 561 U.S. 1048.

Petitioner filed three *pro se* motions to vacate or set aside his conviction under 28 U.S.C. 2255. See D. Ct.

Doc. 41 (July 7, 2011); D. Ct. Doc. 101 (Sept. 23, 2016); D. Ct. Doc. 123 (June 16, 2017). The district court denied the first motion, and both it and the court of appeals declined to issue a certificate of appealability. D. Ct. Doc. 57, at 12 (Oct. 22, 2012); 518 Fed. Appx. 222. The district court dismissed petitioner's later two filings as unauthorized second or successive Section 2255 motions, and petitioner did not appeal. D. Ct. Doc. 120, at 1 (May 3, 2017); D. Ct. Doc. 125, at 1-2 (Aug. 1, 2017); see 28 U.S.C. 2255(h). In 2018, petitioner filed a *pro se* motion styled as a request for relief under Federal Rule of Criminal Procedure 60(b)(6). D. Ct. Doc. 136, at 1 (Feb. 27, 2018). The district court dismissed that motion as another unauthorized second or successive Section 2255 motion, D. Ct. Doc. 138, at 2 (Apr. 28, 2018), and the court of appeals dismissed petitioner's appeal as untimely, 745 Fed. Appx. 508.

In 2019, petitioner filed a *pro se* motion for a sentence reduction under Section 404 of the First Step Act, 132 Stat. 5222. The district court denied the motion. D. Ct. Doc. 177, at 1-10 (June 29, 2020). In the motion, petitioner contended, among other things, that the court was required to recalculate his advisory Sentencing Guidelines range in light of non-retroactive circuit precedent postdating his original sentence. See *id.* at 4. The court disagreed with that contention but nonetheless “[a]lternatively” recalculated petitioner's Guidelines range under current law. *Id.* at 6; see *id.* at 4-7. Then, after considering the “new advisory guideline range” and “all relevant factors under 18 U.S.C. § 3553(a),” the court declined to reduce petitioner's sentence. *Id.* at 7; see *id.* at 9.

The district court observed that petitioner is a “violent, recidivist drug dealer” who “has led an unrelenting

life of crime,” culminating in his arrest at age 40 for the present offense—his third federal offense—“while serving probation for a state drug felony conviction.” D. Ct. Doc. 177, at 7-8. The court declined to credit petitioner’s assurance that his current circumstances illustrate that “he is done with his life of crime.” *Id.* at 9. The court found that a sentence reduction was not warranted in light of petitioner’s “serious criminal conduct, perjury at his sentencing hearing, serious criminal record, violent criminal history, [and] terrible performance on supervision.” *Ibid.*; see *ibid.* (describing petitioner as “one of the least credible human beings and most committed criminals that this court has encountered”).

The court of appeals affirmed in an unpublished, per curiam decision. Pet. App. 3-4.¹ The court found that “the district court did not abuse its discretion in declining to reduce [petitioner’s] sentence,” and “[a]ccordingly * * * affirm[ed] for the reasons stated by the district court.” *Id.* at 4.

2. Petitioner contends (Pet. 6) that the district court erred in denying his Section 404 motion. In particular, petitioner appears to contend that the court should have taken account of intervening circuit precedent under which, according to petitioner, he would no longer qualify as a career-offender under the advisory Guidelines. See *ibid.* (“Reason Four”); see also Pet. App. 12-15 (petitioner’s memorandum in support of the petition). That contention does not warrant further review. Although the court disagreed with petitioner’s claim that it was required to do so, it nonetheless recalculated

¹ The appendix to the petition is not consecutively paginated. In this memorandum, citations to the appendix refer to the pages as they would be numbered if consecutively paginated, rather than to the internal numbering that appears in some places.

petitioner's Guidelines range in the manner he sought and declined to grant him a sentence reduction under Section 404. And the court of appeals found no abuse of discretion. See pp. 2-3, *supra*.

On September 30, 2021, after petitioner had filed his petition for a writ of certiorari in this case, this Court granted certiorari in *Concepcion v. United States*, No. 20-1650 (oral argument scheduled for Jan. 19, 2022). The petition in *Concepcion* framed the question presented in that case as “[w]hether, when deciding if it should ‘impose a reduced sentence’ on an individual under Section 404(b) of the First Step Act of 2018, a district court must or may consider intervening legal and factual developments.” Pet. at I, *Concepcion*, *supra* (No. 20-1650) (citation omitted). Because, as just explained, the district court here did in fact consider the intervening legal developments about the career-offender guideline on which petitioner relies, resolution of the question presented in *Concepcion* would not affect the disposition of this case. In particular, the court calculated the “new advisory guideline range” that is the focus of the petition, and also considered petitioner’s “claims of reformation.” D. Ct. Doc. 177, at 7, 9. The Court should accordingly deny the petition here without awaiting the decision in *Concepcion*.²

Respectfully submitted.

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² The government waives any further response to the petition unless this Court requests otherwise.