

United States Court of Appeals
for the Fifth Circuit

No. 22-50183

United States Court of Appeals
Fifth Circuit

FILED

April 3, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MICHAEL MEDINA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:05-CR-39-1

Before JONES, BARKSDALE, and ELROD, *Circuit Judges.*

PER CURIAM:*

At issue is whether section 403 of the First Step Act of 2018 applies to a defendant's resentencing when his pre-enactment sentence was vacated post-enactment. It does not. AFFIRMED.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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I.

Michael Medina pleaded guilty to, and was convicted of: conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951; conspiracy to use and carry a firearm during a crime of violence, in violation of 18 U.S.C. § 924(o); and two counts of using, carrying, and brandishing a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1).

At the time of his first sentencing, § 924(c) required a seven-year mandatory minimum sentence if a firearm was brandished; and, “[i]n the case of a second or subsequent conviction under this subsection”, a 25-year mandatory minimum sentence. 18 U.S.C. § 924(c)(1)(A), (C) (2004). The 25-year mandatory minimum applied even to instances where the “second or subsequent conviction” was obtained in the same proceeding. *E.g., Deal v. United States*, 508 U.S. 129, 132 (1993) (construing “second or subsequent”). Therefore, the district court in 2005 imposed, *inter alia*, a seven-year sentence for Medina’s first § 924(c) conviction, and a consecutive 25-year sentence for his second.

In 2016, Medina moved to vacate his sentence under 28 U.S.C. § 2255 (providing remedies for sentences imposed in violation of law). But, before the court ruled on the motion, the First Step Act was enacted, amending, *inter alia*, § 924(c)(1)(C). *See* First Step Act of 2018, Pub. L. No. 115-391, § 403, 132 Stat. 5194, 5221–22 (2018) (codified at 18 U.S.C. § 924(c)). The Act replaced the “second or subsequent conviction” language so that the statute now reads: “In the case of a *violation of this subsection that occurs after a prior conviction under this subsection has become final*, the person shall . . . be sentenced to a term of imprisonment of not less than 25 years”. 18 U.S.C. § 924(c)(1)(C) (2023) (emphasis added). In other words, the amended statute no longer requires the imposition of a 25-year mandatory minimum

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sentence for a second § 924(c) conviction that, like Medina’s, was obtained in the same proceeding. *See id.*

Regarding scope, the First Step Act explained that the amended § 924(c) “appl[ied] to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment”. First Step Act of 2018 § 403(b).

After the amendment, the district court granted Medina’s motion in part, vacating his § 924(o) conviction. Deciding full resentencing was appropriate, the court also vacated Medina’s sentence. On resentencing, however, and without mentioning the amended § 924(c), the court reimposed the seven- and 25-year sentences for the two § 924(c) convictions.

II.

Medina contends the district court erred in not applying the amended § 924(c). Because he (as he also concedes) did not raise this issue in district court, review is only for plain error. *E.g., United States v. Broussard*, 669 F.3d 537, 546 (5th Cir. 2012). Under that standard, he must show a forfeited plain error (clear-or-obvious error, rather than one subject to reasonable dispute) that affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes that showing, we have discretion to correct the reversible plain error, but generally should do so only if it “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings”. *Id.* (citation omitted).

During the pendency of this appeal, our court held in *United States v. Duffey* that section 403 of the First Step Act does not “appl[y] to post-enactment resentencings of defendants whose pre-enactment sentences were vacated after the law was enacted”. 92 F.4th 304, 307 (5th Cir. 2024), *petition for cert. docketed sub nom. Hewitt v. United States* (U.S. 12 Mar. 2024) (No. 23-1002). Needless to say, and pursuant to our limited plain-error

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review, the requisite clear-or-obvious error is lacking. Because Medina's pre-enactment sentence was vacated *after* the First Step Act was enacted, section 403 does not apply to his post-enactment resentencing. *See id.*

III.

Accordingly, the sentence is AFFIRMED.