

# United States Court of Appeals for the Fifth Circuit

---

No. 22-51002  
Summary Calendar

---

United States Court of Appeals  
Fifth Circuit

**FILED**

April 14, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

TOMMY DELANDO BURNS,

*Defendant—Appellant.*

---

Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 7:06-CR-89-1

---

Before STEWART, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:\*

Tommy Delando Burns, federal prisoner # 35499-177, appeals the district court's denial of his motion to reduce his sentence under the First Step Act of 2018, Pub. L. No. 115-391, § 404, 132 Stat. 5194 (2018). Burns argues that the district court did not conduct a complete review of his motion.

---

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

No. 22-51002

We review the district court’s ruling on a motion to reduce a sentence under the First Step Act for an abuse of discretion. *United States v. Batiste*, 980 F.3d 466, 469 (5th Cir. 2020). A motion under section 404 cannot be entertained “if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits.” First Step Act, Pub. L. No. 115-391, § 404(c), 132 Stat. 5194, 5222 (2018).

Because Burns had previously filed a motion for a sentence reduction under the First Step Act and that motion was denied after a complete review on the merits, the district court did not abuse its discretion in denying Burns’s current motion under the express terms of § 404(c) of the First Step Act. *See Batiste*, 980 F.3d at 479. The judgment of the district court is **AFFIRMED**.