

United States Court of Appeals for the Fifth Circuit

No. 22-10658
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 23, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CRAIG ALEXANDER,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:01-CR-60-3

Before WIENER, ELROD, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Craig Alexander, federal prisoner # 10855-035, appeals the extent of the sentence reduction the district court granted under section 404 of the First Step Act of 2018. Alexander argues that the district court abused its discretion and violated his right to due process by denying his motion without

* This opinion is not designated for publication. *See* 5TH CIRCUIT RULE 47.5.4.

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giving him the opportunity to reply to the Government's response regarding his post-sentencing conduct.

We review a district court's decision under section 404 of the First Step Act for abuse of discretion. *See United States v. Perez*, 27 F.4th 1101, 1103 (5th Cir. 2022). Even assuming the district court abused its discretion by denying Alexander the opportunity to respond, any error by the district court was harmless because Alexander was already on notice that such information might be presented to the court based on the Government's previous response to a prior 18 U.S.C. § 3582(c)(2) motion; because his motion alluded to his prison disciplinary record, albeit by noting his lack of any misconduct for the previous eight years; because of his lack of any new misconduct since well before the Government's previous response; because the Government remarked favorably regarding this lack of recent misconduct; and because his brief makes no argument as to how he was harmed by the alleged error, beyond his unsupported assertion that the violation of his due process rights alone constituted sufficient harm. *See United States v. Mueller*, 168 F.3d 186, 189 (5th Cir. 1999).

Accordingly, the district court's judgment is AFFIRMED.