United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 10, 2021
Lyle W. Cayce
Clerk

No. 19-60694

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

NASIR ABDUL-ALI,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:05-cr-00045

Before DENNIS, ELROD, and DUNCAN, *Circuit Judges*.

STUART KYLE DUNCAN, *Circuit Judge*:

Nasir Abdul-Ali, federal prisoner # 09596-042, was sentenced in 2005 for four separate drug offenses. In 2019, he moved for a reduction of sentence under the First Step Act of 2018 ("FSA"). The district court granted his motion and reduced his sentence from life to 40 years for his only offense covered by the FSA. Abdul-Ali now appeals, arguing that the court should have further reduced his covered offense and that it should have reduced two other sentences not covered by the FSA. We affirm.

I.

Abdul-Ali was convicted of distributing cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) (Count One); possessing with intent to distribute in excess of 50 grams of cocaine base, in violation of §§ 841(a)(1) and (b)(1)(A) (Count Two); possessing with intent to distribute cocaine powder, in violation of §§ 841(a)(1) and (b)(1)(C) (Count Three); and possessing with intent to distribute marijuana, in violation of §§ 841(a)(1) and (b)(1)(D) (Count Four). Abdul-Ali's designation as a career criminal offender under U.S.S.G. § 4B1.1 and offense level of 37 imposed a mandatory life sentence on Count Two. As a result, the court sentenced him to "Life on Count 2; a term of 40 years on Counts 1 and 3; and a term of 10 years on Count 4, all such terms to run concurrently with each other." These sentences were subsequently affirmed on direct appeal. *United States v. Abdul-Ali*, 222 F. App'x 397, 397–98 (5th Cir. 2007).

In 2019, Abdul-Ali moved for a sentence reduction under Section 404 of the FSA, which gives courts discretion to apply the Fair Sentencing Act of 2010 to reduce a sentence for certain covered offenses. *See United States v. Hegwood*, 934 F.3d 414, 416–17 (5th Cir. 2019). A defendant is eligible for a reduction if: "(1) he committed a 'covered offense'; (2) his sentence was not previously imposed or reduced pursuant to the Fair Sentencing Act; and (3) he did not previously file a motion under the First Step Act that was denied on the merits." *United States v. Batiste*, 980 F.3d 466, 470 (5th Cir. 2020) (citing *Hegwood*, 934 F.3d at 416–17).

Abdul-Ali's conviction for possessing with intent to distribute more than 50 grams of cocaine base (Count Two) is the only offense covered under the FSA. *See Terry v. United States*, 141 S. Ct. 1858, 1862–64 (2021). As the district court noted, "[t]he Fair Sentencing Act . . . increased the amount of crack cocaine necessary to invoke the increased penalties of § 841(b)(1)(A)

from 50 grams to 280 grams." The Government acknowledged that Abdul-Ali was eligible for a reduction and that, if the Fair Sentencing Act changes were applied, he would no longer be subject to a mandatory life sentence under § 841(b)(1)(A), but instead to a term of not less than 10 years to life under § 841(b)(1)(B).[1] The district court granted Abdul-Ali's motion and reduced his Count Two sentence from life to 40 years, while maintaining the sentences for the non-covered offenses. In doing so, the court explained that it still would have imposed a significant term of imprisonment had the Fair Sentencing Act been in place at the time of the original sentencing.

Abdul-Ali timely appealed. He argues that the district court should have further reduced his sentence on Count Two and that it also should have reduced his sentences for Counts One and Three, which are not covered under the Act. We will address each claim in turn.

II.

We review the district court's decision to reduce Abdul-Ali's sentence for an abuse of discretion. *United States v. Jackson*, 945 F.3d 315, 319 (5th Cir. 2019). Under this standard, the defendant must show the court made an error of law or based its decision on a "clearly erroneous assessment of the evidence." *United States v. Larry*, 632 F.3d 933, 936 (5th Cir. 2011) (quotation omitted).

III.

The district court did not abuse its discretion in reducing Abdul-Ali's sentence on Count Two from life to 40 years. Under the FSA, Abdul-Ali's offense level and status as a career offender make his applicable sentencing

[1] Because Abdul-Ali's offense level remains 37 and he is still considered a career criminal offender under the Fair Sentencing Act, his applicable guidelines range became 30 years to life imprisonment.

range 30 years to life on Count Two. When reducing the sentence to 40 years, the district court noted that a significant prison term was still warranted based on his previous recidivism and the violence that accompanied his past crimes.[2] This decision was well within the court's discretion, as well as within the applicable guidelines range. Indeed, while Abdul-Ali was eligible for a reduction, he was not entitled to one. *Batiste*, 980 F.3d at 471 ("Eligibility for resentencing under the First Step Act does not equate to entitlement.").

Abdul-Ali maintains the court erred by not explicitly considering the 18 U.S.C. § 3553(a) sentencing factors when resentencing him. We disagree. We have never held that courts must consider the § 3553(a) factors when assessing a sentence reduction under the FSA.[3] *See, e.g.*, *United States v. Whitehead*, 986 F.3d 547, 551 (5th Cir. 2021); *Batiste*, 980 F.3d at 479. In fact, a complete overhaul of Abdul-Ali's sentence based on the § 3553(a) factors would exceed the confines of the FSA. That statute directs courts to place themselves "in the time frame of the original sentencing, altering the relevant legal landscape only by changes mandated by the 2010 Fair Sentencing Act." *Hegwood*, 934 F.3d at 418. Accordingly, a "modification proceeding" cannot serve as a vehicle for a "collateral attack on a sentence long since imposed and affirmed on direct appeal." *United States v. Hernandez*, 645 F.3d 709, 712 (5th Cir. 2011).

Similarly, we reject Abdul-Ali's argument that he was entitled to a hearing regarding his post-sentence behavior. *See Jackson*, 945 F.3d at 321

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[2] The court explained that "in the course of committing those prior crimes, Abdul-Ali assaulted, held at gunpoint, and threatened to kill a state law enforcement agent."

[3] And although the court did not, and did not need to, expressly consider the § 3553(a) factors, its reasoning reflects that it considered them. *See Whitehead*, 986 F.3d at 551 ("The district court's explanation, albeit succinct, was enough.").

(holding "nothing in the FSA requires" a hearing). Instead, the district court acted appropriately under the FSA's constraints: it considered only whether the Fair Sentencing Act, had it been adopted at the time of the original sentencing, would have changed Abdul-Ali's applicable guidelines range. *See Hegwood*, 934 F.3d at 418; *see also Jackson*, 945 F.3d at 321–22 ("It would therefore make little sense to mandate . . . that the court consider a defendant's *post-sentencing* conduct, which would be to peer outside the time frame of the original sentencing.") (quotation omitted).

In sum, we find no abuse of discretion in the district court's reducing Abdul-Ali's sentence on Count Two from life to 40 years.

IV.

We also conclude the district court did not abuse its discretion in declining to reduce Abdul-Ali's sentences for Counts One and Three, because the statutory penalties for those counts are not covered under the FSA. *See Terry*, 141 S. Ct. at 1862–64.

Abdul-Ali argues his 40-year sentences on Counts One and Three exceed the statutory maximum of 30 years for those offenses. He further argues that, under the FSA, eligibility for a reduction on one offense allows a court to modify related, non-covered sentences. But Abdul-Ali cites no authority for that proposition and, in any event, the only question before us is whether the district court abused its discretion in declining to reduce these non-covered sentences. It did not. As we have explained, under the FSA adjusting a sentence to reflect intervening changes in the guidelines is the "only explicit basis stated for a change in the sentencing." *Hegwood*, 934 F.3d at 418. As such, the district court cannot have abused its discretion

by declining to reduce sentences unaffected by the Fair Sentencing Act, even assuming *arguendo* it had the authority to do so.[4]

AFFIRMED.

[4] Abdul-Ali's challenge to the Counts One and Three sentences under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), likewise fails. This claim, which Abdul-Ali never raised on direct appeal, falls outside the FSA's limited purview. *See Hegwood*, 934 F.3d at 418.