

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

August 16, 2021

Lyle W. Cayce  
Clerk

---

No. 20-10182  
Summary Calendar

---

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

RODOLFO A. CUELLAR, JR.,

*Defendant—Appellant.*

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:94-CR-62-1

---

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

PER CURIAM:\*

Rodolfo A. Cuellar, Jr., federal prisoner # 25755-077, was found guilty of conspiring to distribute cocaine, using a communication facility to facilitate drug trafficking, possessing heroin with intent to distribute, and employing a person under 18 years of age in the distribution of cocaine and

---

\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-10182

heroin. He is serving 40 years in prison. Cuellar moved for a sentence reduction under Section 404 of the First Step Act. The district court denied Cuellar's motion because he had not been convicted of an offense to which Section 404 applies. Cuellar has appealed.

Generally, we review a district court's discretionary denial of relief under Section 404 of the First Step Act for an abuse of discretion. *United States v. Jackson*, 945 F.3d 315, 320 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 2699 (2020). Because the denial in this case turns on the meaning of a federal statute, we apply de novo review. *Id.* The record and Cuellar's motion reflect that he had not been convicted of any offense that was the "violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010." First Step Act, § 404(a), Pub. L. 115-391, 132 Stat. 5194, 5222 (2018); *see also Dorsey v. United States*, 567 U.S. 260, 269 (2012). Accordingly, the district court did not err in denying Cuellar's motion for a sentence reduction under the First Step Act.

The judgment of the district court is AFFIRMED. The Government's motion for summary affirmance is DENIED. The Government's alternative motion for an extension of time to file a brief is DENIED as unnecessary. Cuellar's motion for the appointment of counsel is DENIED.