

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 31, 2022

Lyle W. Cayce
Clerk

No. 21-30413
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DONALD SYLVESTER,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:04-CR-94-1

Before HIGGINBOTHAM, DUNCAN, and ENGELHARDT, *Circuit*
Judges.

PER CURIAM:*

Donald Sylvester, federal prisoner # 24064-265, appeals the district court's order denying his motion for resentencing pursuant to Section 404 of the First Step Act of 2018. He asserts that he was eligible for a sentencing

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 21-30413

reduction and that, in denying his motion, the district court failed to consider mitigating factors or conduct an individualized assessment.

Because Sylvester was convicted of a drug trafficking conspiracy that involved a crack cocaine quantity of less than five grams, his offense is not a covered offense within the meaning of Section 404 of the First Step Act, and he was ineligible for a sentence reduction. *Terry v. United States*, 141 S. Ct. 1858, 1862-64 (2021); *see United States v. Chacon*, 742 F.3d 219, 220 (5th Cir. 2014). Accordingly, the district court's order is AFFIRMED.