

PUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7320

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

LEROY GOODWIN, a/k/a Chip,

Defendant – Appellant.

No. 20-7362

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

LEROY GOODWIN, a/k/a Chip,

Defendant – Appellant.

Appeals from the United States District Court for the District of South Carolina, at Columbia. Cameron McGowan Currie, Senior District Judge. (3:09-cr-00825-CMC-3; 3:10-cr-00611-CMC-1)

Argued: May 5, 2022

Amended: June 21, 2022

Decided: June 17, 2022

Before WYNN, HARRIS, and RUSHING, Circuit Judges.

Affirmed by published opinion. Judge Harris wrote the opinion, in which Judge Wynn and Judge Rushing join.

ARGUED: Maya M. Eckstein, HUNTON ANDREWS KURTH LLP, Richmond, Virginia, for Appellant. Finnuala Kelleher Tessier, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee. **ON BRIEF:** Kenneth A. Polite, Jr., Assistant Attorney General, Daniel S. Kahn, Acting Deputy Assistant Attorney General, Appellate Section, Criminal Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; M. Rhett DeHart, Acting United States Attorney, Charleston, South Carolina, Stacey D. Haynes, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

PAMELA HARRIS, Circuit Judge:

In 2012, Leroy Goodwin was convicted of participating in a drug conspiracy involving powder and crack cocaine and sentenced to 219 months' imprisonment. He moved for relief under § 404 of the First Step Act, which, for eligible defendants, authorizes a reduced sentence reflecting the amended penalties for crack cocaine offenses previously set by the Fair Sentencing Act. The district court found that Goodwin was eligible for relief. But it denied his motion, ruling that his sentence, already at the statutory minimum, could not be reduced further in a § 404 proceeding.

We conclude that Goodwin is not in fact eligible for relief, and on that alternative ground we affirm the district court's denial of his motion. Section 404 of the First Step Act excludes from eligibility defendants whose sentences previously were imposed in accordance with the Fair Sentencing Act. Goodwin committed his offense before the Fair Sentencing Act's 2010 effective date but was convicted and sentenced after that date. His sentencing also came after the Supreme Court clarified, in *Dorsey v. United States*, 567 U.S. 260 (2012), that the Fair Sentencing Act was to be applied to pre-Act offenders, like Goodwin, who had yet to be sentenced when that Act became effective. There is nothing to indicate that Goodwin's sentencing nevertheless failed to accord with the Fair Sentencing Act, and as a result, he is not eligible for § 404 relief now.

I.

We begin with Goodwin's conviction and initial sentencing, and then turn to the present proceedings under the First Step Act.

A.

In 2009, before passage of the Fair Sentencing Act, Goodwin was charged with participating in a drug conspiracy involving both powder cocaine and cocaine base, commonly known as crack cocaine. Specifically, Count One of the indictment charged Goodwin with conspiring to possess with intent to distribute and to distribute five kilograms or more of powder cocaine and 50 grams or more of crack cocaine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. At the time, each of those drug quantities – both the five kilograms or more of powder and the 50 grams or more of crack – triggered the same ten-year mandatory minimum sentence, with a maximum sentence of life, under 21 U.S.C. § 841(b)(1)(A). And for each, a recidivist enhancement would raise the mandatory minimum to 20 years for a defendant previously convicted of a felony drug offense. The government notified Goodwin that it intended to seek these enhanced statutory penalties, citing three prior felony drug convictions. *See* 21 U.S.C. § 851(a).

Before Goodwin was convicted and sentenced, Congress passed the Fair Sentencing Act, which became effective on August 3, 2010. *See* Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372. As we have detailed in previous opinions, the Act sought to reform “a highly disparate sentencing scheme that ‘set the crack-to-powder mandatory minimum ratio at 100-to-1,’ disproportionately impacting African American defendants.” *United States v. Chambers*, 956 F.3d 667, 669–70 (4th Cir. 2020) (quoting *Dorsey v. United States*, 567 U.S. 260, 268–69 (2012)); *see also United States v. Wirsing*, 943 F.3d 175, 176–80 (4th Cir. 2019) (describing history of statute). Accordingly, the Act lowered the statutory minimum sentence for first-time offenses involving 50 grams of cocaine base

from ten to five years, now with a maximum of 40 years' imprisonment, under 21 U.S.C. § 841(b)(1)(B). *See* Fair Sentencing Act § 2(a), 124 Stat. at 2372. The Act did not alter the penalty for the powder cocaine object of the conspiracy with which Goodwin was charged; five kilograms or more of powder cocaine still carried a mandatory minimum of ten years' imprisonment and a maximum of life under § 841(b)(1)(A).

The Fair Sentencing Act does not include an express retroactivity provision. But in June 2012 – still before Goodwin's conviction and sentence – the Supreme Court clarified in *Dorsey*, 567 U.S. at 264, that the Fair Sentencing Act applies to offenders, like Goodwin, who commit a covered offense before its August 3, 2010, effective date, so long as they are sentenced after that date. According to the Court, Congress made clear its “intent to apply the new Act's minimums” to such pre-Act offenders. *Id.* at 273. One month later, this court recognized *Dorsey*'s holding in *United States v. Mouzone*, 687 F.3d 207 (4th Cir. 2012), observing that the Act applies “to offenders whose crimes preceded August 3, 2010, but who are sentenced after that date,” *id.* at 222 (quoting *Dorsey*, 567 U.S. at 273).

On September 11, 2012 – after the Fair Sentencing Act, and after Supreme Court and Fourth Circuit cases making clear that the Act's reduced crack cocaine penalties would apply in post-August 3, 2010, sentencings – Goodwin entered a guilty plea and was sentenced. In his plea agreement, Goodwin had agreed to plead guilty to Count One, the dual-object conspiracy involving cocaine powder and cocaine base. And at his combined plea colloquy and sentencing hearing, Goodwin admitted that he was involved “in a

cocaine and crack cocaine conspiracy” and that he distributed “at least five kilos of powder cocaine.” J.A. 234.¹

Goodwin’s presentence investigative report (“PSR”), finalized on September 4, 2012, calculated his sentence based only on the cocaine powder object of the conspiracy. The PSR listed Goodwin’s offense as “conspiracy to possess with intent to distribute and distribution of 5 kilograms or more of cocaine” and attributed to Goodwin 111.979 kilograms of cocaine powder. J.A. 337. As noted above, the Fair Sentencing Act did not reduce the statutory penalties for cocaine powder under 21 U.S.C. § 841(b)(1)(A), and so Goodwin remained subject to the same mandatory minimum of ten years’ imprisonment, which became 20 years by operation of the recidivist enhancement for prior felony drug offenses.

After accepting Goodwin’s plea, the district court imposed the mandatory minimum sentence of 240 months’ imprisonment. As a result of a credit for time already served on a concurrent state sentence, that term was reduced to 219 months. *See* U.S.S.G. § 5G1.3(b) (providing for adjustment of sentence for time served on a state sentence for a related offense).

B.

In 2018, Congress passed the First Step Act, which gave retroactive effect to the Fair Sentencing Act’s reforms. First Step Act of 2018, Pub. L. No. 115-391, 132 Stat.

¹ Consistent with his plea agreement, Goodwin also entered a guilty plea to a separate money laundering charge, which is not at issue in this appeal.

5194. Under the First Step Act, defendants sentenced before the Fair Sentencing Act’s effective date – as well as defendants sentenced after, like Goodwin – can seek reductions in their sentences reflecting the Fair Sentencing Act’s amended penalties. *See Wirsing*, 943 F.3d at 179–80 (describing retroactive effect of First Step Act). Specifically, § 404(b) of the First Step Act authorizes “[a] court that imposed a sentence for a covered offense” to “impose a reduced sentence as if [the relevant sections] of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed.” 132 Stat. at 5222 (citation omitted). But defendants already sentenced consistent with the Fair Sentencing Act are expressly excluded from eligibility for relief: Under § 404(c), no court may “entertain a motion” for a sentence reduction “if the sentence was previously imposed . . . in accordance with” the Fair Sentencing Act. *See id.*

In March 2020, Goodwin moved for a sentence reduction under § 404(b). Because the penalties for offenses involving 50 grams or more of cocaine base were modified by the Fair Sentencing Act, he argued, he had been sentenced for a “covered offense” and hence was eligible for relief. *See* First Step Act § 404(a), 132 Stat. at 5222 (defining “covered offense”); *United States v. Gravatt*, 953 F.3d 258, 263–64 (4th Cir. 2020) (holding that multi-object conspiracy involving cocaine base is “covered offense” even where statutory penalty range remains unaffected as result of cocaine powder penalties). And in considering a sentence reduction under § 404(b), Goodwin contended, the district court should take account of the fact that the First Step Act, in a separate and concededly non-retroactive provision, had modified the recidivist enhancement so that it no longer would mandate a 20-year minimum in his case. *See* First Step Act § 401(a), 132 Stat. at

5220 (limiting application and reducing length of enhancement); *id.* § 401(c), 132 Stat. at 5221 (providing that adjustments to enhancement apply only to defendants sentenced after Act's effective date).

The government opposed Goodwin's motion. First, the government argued that Goodwin was excluded from eligibility for relief by § 404(c) because his sentence was imposed after and in accordance with the Fair Sentencing Act.² And in any event, the government asserted, Goodwin's statutory penalty range remained 20 years' to life imprisonment by virtue of his guilty plea to possessing and distributing five kilograms or more of cocaine powder, and the district court could not sentence below that range in a § 404(b) proceeding.

The district court denied Goodwin's motion. It appeared to agree with Goodwin that he was "eligible for consideration of a sentence reduction under the First Step Act because he was convicted of a covered offense." J.A. 333. But the court agreed with the government that it could not reduce Goodwin's sentence. "[T]he court must still take into account the powder cocaine object of the conspiracy," the court explained, which by itself – and regardless of any reduced penalty for cocaine base – triggered § 841(b)(1)(A)'s ten-

² The government also argued that Goodwin was ineligible for relief on a second ground: He had not pleaded guilty to a "covered offense" within the meaning of § 404(a). Pointing to what it viewed as inconsistencies in Goodwin's plea agreement and colloquy, the government suggested that Goodwin pleaded guilty not to the multi-object conspiracy charged in Count One of the indictment but instead to a conspiracy involving only powder cocaine, which all agree would not qualify as a "covered offense." *See Gravatt*, 953 F.3d at 264. Because we conclude that Goodwin is ineligible for relief under § 404(c), we need not address this separate argument and will assume without deciding that Goodwin indeed pleaded guilty to Count One's multi-object conspiracy, as the district court determined.

year mandatory minimum prison term. J.A. 332. And under the statutory recidivist provision as it existed at the time of Goodwin’s sentencing, that mandatory minimum was increased to 20 years’ imprisonment. In short, Goodwin’s statutory penalty range of 20 years to life “remain[ed] the same as it was at sentencing due to the cocaine object of the conspiracy, even after application of the First Step Act.” *Id.* It followed, the court concluded, that it lacked authority to reduce Goodwin’s mandatory minimum sentence.

Goodwin filed a timely notice of appeal.

II.

We begin with the question of Goodwin’s threshold eligibility for First Step Act relief, which we consider de novo. *See Chambers*, 956 F.3d at 671 (“We review the scope of a district court’s sentencing authority under the First Step Act de novo.”). Section 404(c) of the First Step Act prohibits a court from “entertain[ing] a motion” for a sentence reduction if the sentence was “previously imposed . . . in accordance with” the amended penalty provisions of the Fair Sentencing Act. *See* 132 Stat. at 5222. We conclude that Goodwin’s sentence was imposed in 2012 “in accordance” with 2010’s Fair Sentencing Act, rendering him ineligible for relief. On that ground, we hold that the district court properly denied Goodwin’s motion for a sentence reduction under the First Step Act and affirm its judgment.³

³ The district court denied Goodwin’s motion for a different reason, ruling that it could not reduce Goodwin’s sentence below the enhanced statutory minimum of 20 years’ imprisonment triggered by the cocaine powder object of his conspiracy. Goodwin’s

In determining whether Goodwin’s sentence was imposed in accordance with the Fair Sentencing Act, as we previously said in a similar case, “[t]iming is everything.” *United States v. Garcia*, No. 20-6075, 2021 WL 5294937, at *3 (4th Cir. Nov. 15, 2021) (per curiam) (unpublished). Goodwin was sentenced in September of 2012. That is two years after the Fair Sentencing Act took effect. It also is several months after the Supreme Court made clear in *Dorsey* that the Fair Sentencing Act would apply to all post-Act sentencings, even where – as here – the offense in question pre-dated the Act. *See* 567 U.S. at 281. And by the time of Goodwin’s sentencing, the Fourth Circuit had embraced that holding, *see Mouzone*, 687 F.3d at 222, and applied *Dorsey* to vacate sentences and remand for resentencing of pre-Act offenders under the Fair Sentencing Act’s new penalty provisions, *see, e.g., United States v. Jones*, 487 F. App’x 783, 784 (4th Cir. 2012) (per curiam) (unpublished).

In short, it was clear at the time of Goodwin’s September 2012 sentencing that he was to be sentenced “in accordance with” the Fair Sentencing Act, subject to that Act’s more lenient penalties for crack cocaine offenses. Given that timing, we will assume, in the absence of some contrary indication, that the district court followed the law. *See*

primary argument on appeal is that the district court erred in this regard: Section 401 of the First Step Act amended the applicable recidivist provision so that it no longer would mandate a 20-year minimum in his case, he argues, and even though § 401 is not retroactive, *see United States v. Brunson*, 968 F.3d 325, 335 (4th Cir. 2020), the district court should have applied it in imposing a new sentence under § 404(b). Because we conclude that Goodwin is ineligible for relief at the threshold, we have no occasion to address that argument today. *See United States v. Smith*, 395 F.3d 516, 519 (4th Cir. 2005) (explaining that we may affirm a district court judgment on any ground apparent from the record).

Garcia, 2021 WL 5294937, at *3; *see also Wyatt v. United States*, 591 F.2d 260, 265 (4th Cir. 1979) (general presumption of regularity attends all judicial acts). And there is no suggestion here that the district court somehow failed to live up to this legal obligation.

Instead, the 20-year sentence imposed by the district court is entirely consistent with the Fair Sentencing Act's reforms. As we have explained, while that Act reduced the statutory penalties for the quantity of cocaine *base* associated with Goodwin's offense, it left unchanged the now-higher statutory range – starting at a minimum of 20 years in prison – for the five kilograms or more of cocaine *powder* to which Goodwin pleaded guilty.⁴ The PSR, in calculating a 20-year minimum sentence, relied exclusively on that cocaine powder quantity, without any reference to cocaine base – likely, as the government suggests, in recognition of the Fair Sentencing Act's effect. Goodwin's sentence was not any lower as a result of the Fair Sentencing Act. But that is not because he was incorrectly denied the benefit of that Act; it is because the newly lowered penalty range for crack cocaine was subsumed in his case by the higher statutory minimum attached to the cocaine powder aspect of his offense.

⁴ More specifically, after the Fair Sentencing Act as before, Goodwin was subject under 21 U.S.C. § 841(b)(1)(A)(ii) to a ten-year mandatory minimum sentence based on the five kilograms or more of cocaine powder associated with his conspiracy. And under the then-current version of § 841(b)(1)(A)(ii), that minimum rose to 20 years under the recidivist enhancement for prior felony drug convictions. As noted earlier, the First Step Act amended that recidivist enhancement, limiting its application and reducing its length. *See* First Step Act § 401(a), 132 Stat. at 5220. But at the time Goodwin's sentence was imposed, he remained subject to a 20-year statutory minimum sentence by virtue of the cocaine powder object of his conspiracy alone.

Neither the district court nor Goodwin's PSR, we recognize, expressly addressed the Fair Sentencing Act's changes to the statutory penalties for the cocaine base object of Goodwin's conspiracy. But that is simply a reflection of "the reality of multi-drug conspiracies, wherein the statutory sentencing range reflects the highest tier of statutory penalties." *Garcia*, 2021 WL 5294937, at *4. It also is true, as Goodwin emphasizes on appeal, that Count One of his indictment, which charges him with an offense involving "50 grams or more" of crack cocaine, is keyed to the pre-Fair Sentencing Act penalty structure for crack cocaine, under which 50 grams, and not the present 280 grams, *see* 21 U.S.C. § 841(b)(1)(A)(iii), was the dividing line between statutory penalty tiers. But it is not surprising that Goodwin's *indictment*, filed before passage of the Fair Sentencing Act, does not reflect that Act's amendments. The question is whether Goodwin's *sentence* was "imposed . . . in accordance" with those amendments. *See* First Step Act § 404(c), 132 Stat. at 5222. And on this record, there is no reason to believe that Goodwin's sentence was not imposed consistent with the Fair Sentencing Act.

We reached the same conclusion on very similar facts in our unpublished decision in *Garcia*, 2021 WL 5294937, at *3–*4, and now reaffirm that position. Like Goodwin, the defendant in that case was charged with a multi-object drug conspiracy committed before enactment of the Fair Sentencing Act. But like Goodwin, he was sentenced only after the Act took effect and, crucially, after the Supreme Court clarified in *Dorsey* that the Act's amended crack cocaine penalties therefore would apply to him. *Id.* at *3. Given that timing, we determined, and in "the absence of any indication that he was not sentenced in accordance with the Fair Sentencing Act," the defendant was ineligible for First Step Act

relief under § 404(c). *Id.* And because that defendant – again like Goodwin – was “subject to the same statutory penalty range before and after the enactment” of the Fair Sentencing Act due to the quantities of drugs other than crack cocaine involved in his conspiracy, there was nothing to suggest that he had been sentenced outside the parameters of that Act. *Id.* at *3–*4.

We apply the same reasoning here. When Goodwin was sentenced in 2012, it already was clear that the district court was obliged to sentence him consistent with the Fair Sentencing Act’s amended penalties for crack cocaine offenses. On this record, there is no indication that the district court failed to do so. Accordingly, we find that Goodwin’s sentence “was previously imposed . . . in accordance” with the relevant provisions of the Fair Sentencing Act and that § 404(c) of the First Step Act therefore renders him ineligible for relief.

III.

For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED