

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 19-6544**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENYATTE BROWN,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Columbia. Margaret B. Seymour, Senior District Judge. (3:01-cr-01109-MBS-1)

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Submitted: November 21, 2019

Decided: November 25, 2019

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Before KEENAN and DIAZ, Circuit Judges, and SHEDD, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Emily Deck Harrill, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Columbia, South Carolina, for Appellant. Sherri A. Lydon, United States Attorney, William K. Witherspoon, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenyatte Brown appeals the district court's order denying his motion for a sentence reduction pursuant to § 404 of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194, 5222 (2018), which permits a district court to impose a reduced sentence on a defendant convicted of a covered offense as if certain provisions of the Fair Sentencing Act of 2010, Pub. L. No. 111-2220, 124 Stat. 2372, 2372 (2012), were in effect at the time the defendant committed the covered offense. Section 404(b) of the First Step Act defines a covered offense as "a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act." Brown was convicted of possessing with intent to distribute five grams or less of crack cocaine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) (2012). Because the Fair Sentencing Act did not modify the statutory penalties for that offense, Brown's offense is not a covered offense and the district court correctly denied Brown's motion to reduce his sentence pursuant to § 404 of the First Step Act.

We therefore affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*